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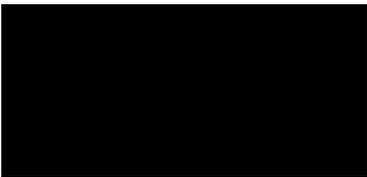


FILE: EAC 03 022 54585 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen its previous decision. The motion is granted. The AAO's previous decision is withdrawn. Upon consideration of the appeal, the appeal will be dismissed, and the petition will be denied.

The petitioner is a corporation whose primary business is the operation of a retail liquor store and redemption center. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. The crux of the director's decision was his assessment that, while some of the proposed duties "may be of specialty in scope (such as preparing and filing monthly sales and withholding, and excise tax)," the majority are not.

On appeal, counsel contends that the director did not fairly consider the evidence of record and that he exceeded his authority by not deferring to the petitioner's judgment that it required the services of an accountant.

The director's decision to deny the petition was correct. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter, and (5) the Form I-290B and counsel's brief.

As shall be evident in the discussion below, the AAO disagrees with two aspects of the director's decision, namely: (1) his apparent acknowledgement that some of the proposed duties require a bachelor's degree level of knowledge in accounting or a related specialty, and (2) his statement to the effect that a position cannot qualify as a specialty occupation if a majority of its duties are not at the specialty occupation level. Therefore, the AAO here exercises its discretion to affirm the denial of the petition on a ground not cited by the director but supported by the record of proceeding.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. (Italics added.)

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) has consistently interpreted the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, CIS regularly approves H 1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its April 30, 2003 letter of reply to the RFE, the petitioner provided the following information about the proffered position:

The beneficiary will be responsible for doing the day to day banking of our company including the payment of purchase and expense bills as well as handling the daily cash from

store and lottery sales and depositing to the proper bank accounts. The beneficiary will spend approximately 40% of his time doing these tasks.

The beneficiary will also be responsible for preparing and filing the monthly sales and withholding as well as the quarterly tobacco excise tax returns. The beneficiary will be calculating the gross monthly sales determining the taxable portion and calculating the monthly sales tax liability. The beneficiary will also file a monthly withholding return by calculating the state tax withheld from employees['] salaries and filing the form. The tobacco excise return is filed quarterly and an excise tax is paid on the purchase of tobacco products. The beneficiary will keep track of the purchases of tobacco products every quarter and file the returns along with the tax payment. The beneficiary will spend approximately another 40% of his time doing these tasks. The remaining time will [be spent in] miscellaneous work such as dealing with the different vendors of the business, our outside accountants[,] as well as keeping the owner informed about the day to day operations of our business.

The beneficiary will not handle any bookkeeping duties[,] as this is currently handled by our outside accounting firm who prepare[s] the trial balance and make[s] all the adjusting entries. They also file our quarterly federal payroll tax returns as well as our annual corporate tax returns.

We did not have this position in the past as the owner use[d] to handle these accounting issues himself. However, the owner has expanded a lot lately with numerous other business [sic] and is unable to handle these tasks anymore. Hence, he is looking for a qualified accountant who can handle these day to [day] accounting needs of the business.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

Upon consideration of all the information presented by the petitioner, the AAO finds that the petitioner has established that the proffered position is one which normally requires the application of some knowledge of accounting, but *not* that the requisite knowledge is that of at least a bachelor's degree, or its equivalent, in accounting or a related specialty. Therefore, the proffered position is not a specialty occupation.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on accounting duties as presented in the current, 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438).

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accountants. This statement (*Handbook*, at 428) is one of the illustrations in the *Handbook* that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The AAO finds that the evidence of record about the proffered position and its duties does not establish the position as one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty. To the extent that it is described in the record, the proffered position most closely comports with that of a full-charge bookkeeper, a position that the *Handbook* indicates does not require at least a degree, or its equivalent, in a specific specialty.

Aside from the decisive weight of the record's description of the duties, there are other substantially unaddressed indications that the proffered position does not require at least a bachelor's degree or the equivalent in a specific specialty. The petitioner states that the owner had previously performed the duties now proposed for the beneficiary, but there is no evidence that the owner held a bachelor's degree or the equivalent in accounting or a related specialty. Furthermore, there is no evidence that the outside accounting firm would depend on the beneficiary to perform any functions requiring the services of a person with a bachelor's degree or higher in accounting or a related specialty. In this regard, the AAO notes that neither the tax-related duties nor any other duties specified for the beneficiary have been shown to require such a degree.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The evidentiary value of the record's job vacancy advertisements from other employers is inconsequential for this or any other criterion of 8 C. F.R. § 214.2(h)(4)(iii)(A). As limited as they are to sparse, generalized, and generic information about the duties of their positions, these advertisements do not provide a factual basis for a meaningful comparison with the duties proposed for the beneficiary – which clearly are not those of a specialty occupation. Also, there is no evidence of record as to how representative the advertisements are of the advertisers' usual recruiting and hiring practices.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not demonstrate such uniqueness or complexity, but rather indicates that the beneficiary would be operating on no greater level than a full-charge bookkeeper or a junior accountant with less than a bachelor's degree in accounting.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor. As this is the first time that the position is being offered, the petitioner did not present evidence to establish that the proffered position is one for which the employer has a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record does not demonstrate such specialization or complexity, but rather indicates that the duties are associated with less than a bachelor's degree level of accounting knowledge.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The educational equivalency evaluation upon which the petitioner relies depends partly upon an assessment of the beneficiary's work experience. However, there is no evidence that the evaluator is an official authorized by a U.S. college or university to grant college-level credit for training or experience, as required by 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1). For this reason also, the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

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**ORDER:** The previous decision of the AAO, dated September 30, 2003, is withdrawn. The appeal is dismissed. The petition is denied.