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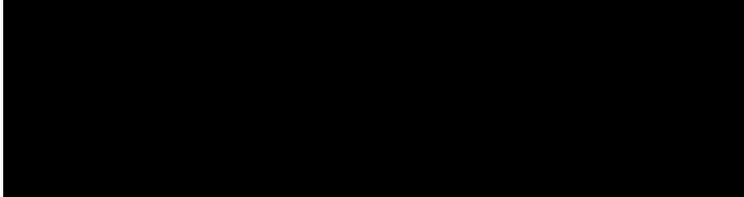
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FILE: EAC 03 129 53673 Office: VERMONT SERVICE CENTER Date: OCT 04 2005

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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a wholesaler and retailer of cellular phones and accessories. It seeks to employ the beneficiary as a financial specialist. The petitioner, therefore, 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 ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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) interprets 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial specialist. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing budgets; forecasting markets and preparing financial reports; reviewing and analyzing business operations and future investment plans; recommending the most advantageous business expansion and investment strategies; performing performance evaluations; handling cost and management asset; recording and analyzing financial information; compiling and preparing financial data for accounting, bookkeeping, financial management and auditing; verifying the accuracy of records, checking for mismanagement, waste, and fraud; examining and evaluating financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste and ensure that business operations are efficient; reviewing operations to evaluate their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations; analyzing and interpreting financial information to assist management in making sound business decisions; assisting in developing a solid retirement plan with prudent investments; and utilizing computer skills to manage financial data, implement internal control, and develop accounting methods, financial plans, and budgets. The petitioner requires a bachelor's degree with courses in accounting.

The director stated that many of the proposed duties reflect those of a bookkeeper, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) reports that this occupation does not require a bachelor's degree. The director stated that it is unlikely that the petitioner requires the services of a full-time financial specialist based on the size and scope of the business. The director found the job posting unpersuasive in establishing that the proposed position requires a bachelor's degree, and referenced *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), which states that CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation; and that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

On appeal, counsel narrates the proposed duties and mistakenly states that the petitioner seeks to employ the beneficiary as an accounting consultant, instead of a financial specialist. Counsel discusses several cases and asserts that they show that an accounting consultant qualifies as a specialty occupation. According to counsel, the petitioner requires the services of an accounting consultant due to its stage of growth. Counsel asserts that in light of the petitioner's success in the market and establishment of new branches of the company, it needs to streamline operations in order to obtain a profit margin ratio and organize and computerize financial documents and procedures. Counsel states that the petitioner is involved in implementation of custom software for wireless equipment wholesalers, and that it has developed custom software for maintaining accounts at one location, and has obtained contracts for maintaining such accounting. To help in expanding, counsel claims that the petitioner requires someone to compile financial documents thereby permitting the

petitioner to have a clear financial picture of the company so that it can make accurate business decisions. Counsel emphasizes that the size of an employer has no relationship to the need for an accountant. Counsel states that the submitted bank statement reveals that the petitioner is financially viable. Counsel refers to the *Dictionary of Occupational Titles (DOT)* to establish that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel refers to the *Dictionary of Occupational Titles (DOT)* to establish that the proposed position is a specialty occupation. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and a Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO often refers to the *Handbook* for information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proposed position differs from that of an accountant. The *Handbook* reports that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. Of these fields, the AAO finds that the closest category to the proposed position is the management accountant. The *Handbook* relays:

Management accountants—also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams

involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proposed position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary is not part of a management team and will not prepare financial reports for the described nonmanagement groups. In light of this dissimilarity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities differ from those of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proposed position.

Furthermore, the level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the proposed duties. No evidence in the record reveals the level of income generated by the petitioner; the AAO notes that the petitioner failed to indicate this information as requested on the Form I-129 petition. While the evidence of record does indicate that the proposed duties require some knowledge and application of accounting principles, since there is no evidence of the petitioner's income the AAO cannot find that the proposed position requires highly specialized knowledge in accounting that is at the baccalaureate level. The petitioner, therefore, fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

No evidence in record establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the beneficiary's duties differ from those of an accountant as that occupation is described in the *Handbook*. Although the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, since the level of income generated by the petitioner is not disclosed, the AAO cannot find that the proposed duties are so complex or unique as to require a baccalaureate degree in accounting or a related field.

No evidence establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), that the petitioner normally requires a degree or its equivalent for the position, as the petitioner does not have a past practice of requiring a bachelor's degree for the proposed position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed that the proposed duties differ from those of an accountant; and that while the evidence of record indicates that the proposed position requires some knowledge and application of accounting principles, since the petitioner's income is not disclosed, the AAO cannot find that the proposed duties are so specialized and complex as to be usually associated with the attainment of a baccalaureate or higher degree in accounting or a related field. Consequently, the petitioner fails to establish this fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

ORDER: The appeal is dismissed. The petition is denied.