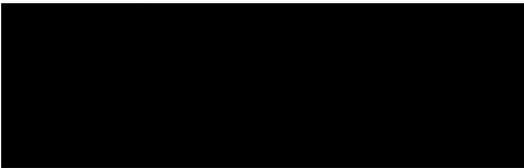




U.S. Citizenship
and Immigration
Services

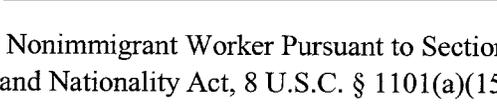
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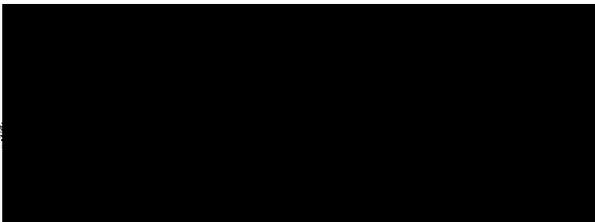
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FILE: WAC 03 255 50590 Office: CALIFORNIA SERVICE CENTER Date: **SEP 21 2005**

IN RE: Petitioner: 
Beneficiary: 

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

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 charter bus and tour operator that seeks to employ the beneficiary as an accountant. 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 an accountant. 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 handling accounts receivable (collection and posting, preparation of invoices and bank deposits, follow-up on payments from clients, and running and mailing statements), accounts payable (posting payables, checks run processing, documentation of processes, working with vendors and suppliers to verify charges and purchases), the general ledger (maintaining the general ledger, documenting processes, and preparing and posting journal entries), cash management (petty cash custodian, preparing bank reconciliation), payroll (verifying employee time sheets, preparing pay checks, documenting processes, federal and state payroll taxes), and financial record keeping (preparing profit and loss statement, cost analysis and cash flow statements, quarterly tax returns (IFTA taxes), PUC taxes, and workmen's compensation audit return. The petitioner seeks to employ the beneficiary who holds, according to the International Education Research Foundation, Inc., the educational equivalency to a bachelor's degree in business administration.

The director stated that although many of the proposed duties include those of an accountant, the majority of the duties reflect those of accounting clerks and bookkeepers, which are occupations that do not require a specific bachelor's degree. The director emphasized that since the employer does not employ a bookkeeper or accounting clerk the beneficiary would perform these duties. The director stated that when determining whether a position qualifies as a specialty occupation, the actual duties to be performed are determinative and not the job title. The director found that the evidence of record was not persuasive in showing that the job offered could not be performed by an experienced person whose educational training fell short of a bachelor's degree, and that not all of the described duties are complex enough to require the level of knowledge of a specialty occupation.

On appeal, counsel narrates the proposed duties, states they are complex and sophisticated, and equates them to those of an accountant. Counsel states that the proposed position resembles that of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and the *Dictionary of Occupational Titles* (DOT). Counsel refers to and asserts that the submitted job postings show that businesses of different sizes require the services of an accountant with a bachelor's degree to perform similar duties to those of the proposed position. According to counsel, the job postings reflect diverse duties, demonstrating that accountants perform various tasks in the corporate setting, including what the director construes as "bookkeeping" responsibilities. Counsel maintains that the director's sole reliance on the *Handbook* to evaluate an accountant's duties is misplaced. Counsel states that bookkeepers and accounting/auditing clerks are lower-level financial record keepers, and that the *Handbook* and the *DOT* do not describe the duties of these occupations as including auditing and analyzing financial statements. Counsel asserts that the director erroneously presumed that certain accounting duties must be performed for the petitioner, and that these duties would be performed by the beneficiary because the petitioner does not employ bookkeeping clerks. Counsel states that based on the complex financial

transactions and fiscal responsibilities of the proposed position, the petitioner requires the services of an accountant. Counsel states that the job postings reveal that an accountant carries out sophisticated financial analysis and prepares reports, and also carries financial duties that the director narrowly construes as too low-level for an accountant to perform. Counsel stresses that CIS previously approved an H-1B petition submitted on the beneficiary's behalf by the petitioner for the same position; thus, CIS had already determined that the proposed position is a specialty occupation. Counsel states that the degree requirement is common to the industry, as reflected in the job postings; and that the petitioner normally requires a bachelor's degree for an accountant, as reflected in the prior H-1B case.

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 proffered position is not a specialty occupation.

Counsel noted that CIS approved a petition that had been previously filed on behalf of the beneficiary by the petitioner. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approval does not preclude CIS from denying an extension of the original visa petition based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO now 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.

On appeal, counsel states that the proposed position parallels that of an accountant as that position is described in the *DOT*. The *DOT's* SVP rating does not indicate whether 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.

Counsel also refers to the *Handbook* to show that the proposed position resembles an accountant. The AAO often turns to the *Handbook* for information about the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. The *Handbook* reveals that the director correctly concluded that the proposed position is similar to that of bookkeeping, accounting, auditing and financial clerks. The *Handbook* describes these occupations as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The *Handbook* states:

Another change in these occupations is the growing use of financial software to enter and manipulate data. Computer programs automatically perform calculations that previously were done manually. Computers also enable clerks to access data within files more quickly and even generate statements automatically. . . .

The beneficiary will handle accounts receivable (collection and posting, preparation of invoices and bank deposits, follow-up on payments from clients, and running and mailing statements), accounts payable (posting payables, checks run processing, documentation of processes, working with vendors and suppliers to verify charges and purchases), the general ledger (maintaining the general ledger, documenting processes, and preparing and posting journal entries), cash management (petty cash custodian, preparing bank reconciliation), payroll (verifying employee time sheets, preparing pay checks, documenting processes, federal and state payroll taxes), and financial record keeping (preparing profit and loss statement, cost analysis and cash flow statements, quarterly tax returns (IFTA taxes), PUC taxes, and workmen's compensation audit return). Similarly, bookkeeping, accounting, auditing, and financial clerks total, balance, and reconcile billing vouchers; produce financial statements and prepare reports and summaries for supervisors and managers; maintain accounting records for the profit and loss statement; handle accounts payable, accounts receivable, and payroll; check figures, postings, and documents to ensure that they are accurate and properly coded; review invoices and statements; and update and maintain one or more accounting records.

The *Handbook* conveys that employers require most financial clerks to have at least a high school diploma; and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.

Counsel asserts that bookkeepers and accounting/auditing clerks do not audit and analyze financial statements, and that based on the complex financial transactions and fiscal responsibilities of the proposed position, the petitioner requires the services of an accountant. Given the level of income generated by the petitioner, which has a direct and substantial bearing on the scope, complexity, and depth of the proposed duties, the AAO finds that the proposed position does not involve complex financial transactions and fiscal responsibilities. Responsibility for income of \$800,000, which the petitioner generated, assumedly in 2002, differs vastly from responsibility associated with a far larger income. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, given the income generated by the petitioner and the description of the proposed duties, the evidence does not establish that the proposed position requires highly specialized knowledge that is at the baccalaureate-level in accounting. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, for a junior accounting position, the *Handbook* reports that a bachelor's degree is not required. The *Handbook* states:

Many graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

Furthermore, the *Handbook* states that tax preparers that prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant, do not require a bachelor's degree; instead, they require moderate-term on-the-job training.

The AAO also points out that the petitioner indicates that a bachelor's degree in business administration is appropriate for the proposed position. However, as previously mentioned, 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. As indicated in *Matter of Micheal Hertz Assocs., 19 I&N Dec. 558, 560 (Comm. 1988)*, for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Here, the petitioner requires a bachelor's degree in business administration without indicating a specific field of concentration; this does not satisfy the requirement that the bachelor's degree be *in a specific specialty* that is directly related to the proposed position.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits job postings to satisfy 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. Counsel asserts that the job postings show that businesses of different sizes require the services of an accountant with a bachelor's degree to perform similar duties to those of the proposed position. The postings are not persuasive in establishing the first alternative prong of this criterion as the regulation indicates that the petitioner, a charter bus and tour operator with 10 employees, must be similar to the businesses in the postings. [REDACTED] is in the telecommunications industry; E*Trade Financial is in the finance industry; and Accounting Principals is in the accounting field. No description is given of [REDACTED], or the company represented by [REDACTED] Staffing. For these reasons, the postings are not persuasive in establishing 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 in a

specific specialty. As discussed earlier, the beneficiary's duties parallel those of bookkeeping, accounting, auditing and financial clerks as those occupations are delineated in the *Handbook*. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, in the context of the income generated by the petitioner, the evidence does not establish the proposed duties as so complex or unique as to require a baccalaureate degree in accounting or a related field. Furthermore, as previously discussed, the petitioner's acceptance of a bachelor's degree in business administration without indicating a specific field of concentration does not satisfy the requirement that the bachelor's degree be *in a specific specialty* that is directly related to the proposed position.

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must show that it normally requires a degree or its equivalent for the position. Counsel points to the previously approved H-1B petition to establish this criterion. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, however. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As already discussed in this decision, the proposed position parallels that of bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require a bachelor's degree. Moreover, the petitioner's acceptance of a bachelor's degree in business administration without indicating a specific field of concentration does not satisfy the requirement that the bachelor's degree be *in a specific specialty* that is directly related to 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 correspond to those of bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require a bachelor's degree. Even though the evidence of record indicates that the proposed position requires some knowledge and application of accounting principles, the evidence does not establish duties that are so specialized and complex as to be usually associated with at least a bachelor's degree level of knowledge in accounting or a related field. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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.