

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



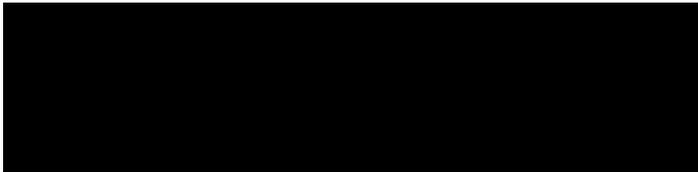
D-2

FILE: WAC 04 253 53521 Office: CALIFORNIA SERVICE CENTER Date: **AUG 01 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 manufactures prosthetic, orthotic, and pedorthic devices. It seeks to employ the beneficiary as a chief financial officer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 chief financial officer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 15, 2004 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: creating and implementing accounting-related policies and procedures; forecasting and establishing financial goals, objectives, and budgets; overseeing the maintenance and management of accounting databases; overseeing and directing all financial functions, including accounting, budget, credit, insurance, tax, and treasury; managing and preparing financial reports, including income statements, balance sheets, and cash-flow management; preparing and filing third-party reports and returns; managing and supervising the payroll; and directing and managing the accounting and administration functions. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a U.S. master's degree in business administration and a foreign bachelor's degree in economics.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner has satisfied all of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the petitioner recently launched a "national market campaign" to promote the "Kunzli orthopaedic ankle support boots," thereby necessitating the services of a chief financial officer "in order to position itself for the anticipated business growth and expansion." Counsel also states that the proposed duties are so specialized and complex as to require a bachelor's degree in business administration.

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.

The AAO turns first to 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 Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

At the outset, the AAO notes inconsistencies regarding the number of people that the petitioner employs. Information on the petition that was signed by the petitioner's CEO on September 15, 2004, reflects that the petitioner was established in 1994, and has four employees and a gross annual income of \$700,185. The petitioner's most recent quarterly wage report for the quarter that ended on June 30, 2004, which was submitted in response to the director's request for additional evidence, reflects only three employees. The petitioner's organizational chart reflects five employees. In view of these conflicting numbers, the petitioner's organizational hierarchy is not clear. It is also noted that the record contains no evidence of the petitioner's claimed gross annual income, such as federal income tax returns. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Further, although the proposed duties and the organizational chart reflect that the petitioner would supervise two employees, an administrative assistant and a network specialist, the network specialist position has not been filled. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is a specialty occupation. Counsel's assertion on appeal that the petitioner recently launched a "national market campaign" to promote the "Kunzli orthopaedic ankle support boots," thereby necessitating the services of a chief financial officer "in order to position itself for the anticipated business growth and expansion," is noted. There is no documentation of record, however, that current growth and expansion plans are underway. The record does not contain any evidence of the petitioner's recently launched "national market campaign" nor does the record contain any evidence that the duties that the beneficiary would perform as a result of this campaign would require the theoretical and practical application of at least a bachelor's degree level of a highly specialized body of knowledge. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In view of the foregoing, the proposed duties do not comprise a position that meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that is, one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty.

Regarding parallel positions in the petitioner's industry, the petitioner submitted copies of various publications, such as the *Handbook*, the DOL's *O\*Net*, and the California Employment Development Department (EDD), to demonstrate that the degree requirement is common to the industry. The director did not state that the job of chief financial officer/financial manager is not a specialty occupation. The director concluded correctly that the proffered position is not one of a chief financial officer/financial manager and, therefore, it does not require a baccalaureate degree, or its equivalent, in a specific specialty. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that it is the petitioner's business practice to hire only individuals with at least a bachelor's degree or an equivalent thereof. The record, however, does not contain any evidence of the petitioner's past hiring practices and, therefore, the petitioner has not met its burden of proof in this regard. 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)).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.