



U.S. Citizenship
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FILE: SRC 04 249 50162 Office: TEXAS SERVICE CENTER Date: **APR 12 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.

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 provides home healthcare services. It 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, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first determine whether the proposed position qualifies as 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.

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) the 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 the following duties: analyze financial information and prepare financial reports; compile and analyze financial information to prepare entries to accounts such as general ledger accounts, documenting business transactions; analyze financial information detailing assets, liabilities, and capital; prepare balance sheets, profit and loss statements and other reports that summarize the current and projected financial position; audit contracts, orders and vouchers and prepare reports to substantiate individual transactions prior to settlement; establish, modify, document, and coordinate implementation of accounting and accounting control procedures; and devise and implement a manual or computer-based system for general accounting. The petitioner seeks to employ the beneficiary, who allegedly holds the equivalent of a bachelor's degree in business administration with a major in management.

In her denial, the director found the submitted approval notices for accountants unpersuasive in establishing the proposed position as a specialty occupation. The director stated that the petitioner's organization and industry would not require a baccalaureate or higher degree (or its equivalent) for the proposed position, which the petitioner claims is an accountant. The director disagreed with the petitioner's claim that the proposed position is that of an accountant, finding that the proposed duties relate to those of a financial clerk as that occupation is described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reports that employers do not require financial clerks to possess a baccalaureate degree. The director stated that an accountant holds a baccalaureate degree in accounting or a related field and that the beneficiary's degree in business administration with a major in management is not appropriate for an accountant. The director discussed *Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558. This case states that 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; and that the position must require a precise and specific course of study that relates directly and closely to the position in question.

On appeal, counsel states that the petitioner has four full-time employees and contracts with several professionals to increase its staffing. Counsel contends that the proposed position is an accountant, not a financial clerk as described in the *Handbook*. A financial clerk will not be able to deal with Medicare requirements which require documentation and cost report analysis, counsel states. Counsel claims that the petitioner is submitting on appeal the entire record of petitions that were previously approved for positions that are similar to the one offered here. Counsel maintains that the beneficiary is qualified for the proposed position.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service centers in the prior cases, even though counsel asserts that he is submitting this evidence on appeal. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the H-1B petition offered here is parallel to the prior approved petitions. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In addition, CIS is not required to approve 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). Neither CIS nor any other 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).

And now, the AAO 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.

The AAO routinely consults the *Handbook* about the duties and educational requirements of occupations. The *Handbook* explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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, and cost 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.

The AAO finds that the evidence in the record is insufficient to show that the proposed position requires the theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting or a closely related field. The record does not contain DE-6 records, federal or state income tax returns, or any other evidence relating to the petitioner's financial transactions. On the Form I-129 petition the petitioner did not indicate its gross and net annual income. Without such evidence, the AAO cannot determine the level of accounting knowledge that will be required in handling financial transactions for the petitioner. For instance, there is no information about the types and volume of transactions; the nature of the petitioner's financial statements and records; the spectrum of costs and expenses to be managed; the extent of the petitioner's financial dealings; the range and scope of financial records; the specific types of data to analyze; and the size of the petitioner's budget and the number of budget elements. There is no evidence of previous budgets or financial documents illustrating a scope or depth of the petitioner's financial transactions and operations. Thus, no evidence in the record indicates that the petitioner will employ the services of an accountant. 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)).

The AAO notes that the level of income generated by a petitioner has a direct and substantial bearing on the scope, breath, and depth of the proposed duties. With the instant petition, since the H-1B petition does not reflect the petitioner's gross or net annual income, there is no factual basis for the AAO to conclude that the proffered position is one that normally requires at least a bachelor's degree (or its equivalent) in accounting or a related specialty.

The *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical

¹ At its Internet site (<http://www.nsaacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

knowledge of the subject matter covered on the ACAT Comprehensive Examination.”² “Up to two” of the required years of work experience “may be satisfied through college credit.”

The director found that the proposed duties resemble those of a financial clerk. The *Handbook* states 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.³

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 is the normal minimum requirement for entry into the particular position.

There is no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 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 under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence to establish that the proposed duties are complex or unique, thereby requiring a baccalaureate degree in accounting or a related field. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the petitioner must normally require a degree or its equivalent for the position. There is no evidence in the record to establish this criterion.

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. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence that would establish the nature of the

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

³ The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that an associate’s degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the generally accepted accounting principles (GAAP), forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

proposed duties is specialized and complex, requiring a bachelor's degree in accounting or a related field. Consequently, the petitioner fails to establish this last 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 on this ground.

The AAO will now address the director's finding that the beneficiary is not qualified for a position as an accountant.

According to the director, the beneficiary's bachelor's degree in business administration with a minor in management does not qualify him for the proposed position. An accountant, the director states, holds a bachelor's degree in accounting or a related field. The record contains the beneficiary's transcript, which shows completion of sufficient coursework relating to the fields of accounting or business. Based on this, the AAO finds that the beneficiary is qualified for a position as an accountant. Nevertheless, the AAO has determined that the proposed position is not that of an accountant; for this reason, 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.