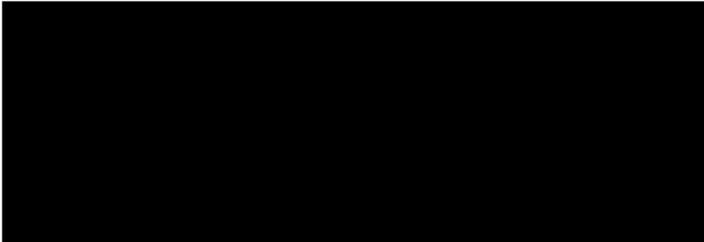




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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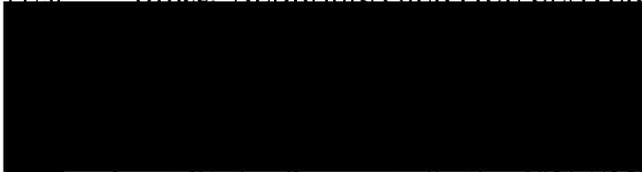


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FILE: LIN 05 023 51120 Office: NEBRASKA SERVICE CENTER

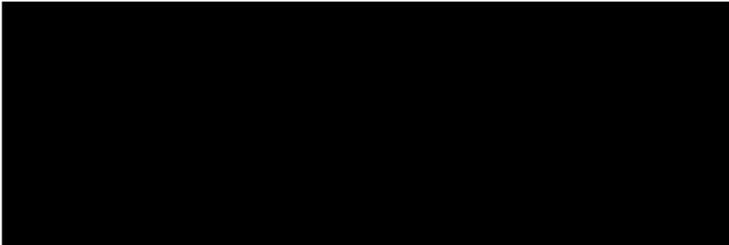
Date: DEC 05 2006

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, Chief
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 manufactures, researches, develops, and sells contrast media injection systems. 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 proposed position is not a specialty occupation. Counsel submitted a timely appeal.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. The document in the record entitled "Position Description," which is dated September 21, 2004, describes the position along with its educational and experience requirements. The major responsibilities of the position are depicted as: processing and entering vendor invoices including assigning G/L account codes; vouching vendor invoices with packing slips and with system receiving transactions; dispatching non-inventory, PeopleSoft purchase orders ensuring that proper signature approval has been obtained; preparing and recording monthly journal entries to maintain G/L; reconciling inventory from MAX to the G/L; recording all inventory transactions in the G/L; maintaining the accounts receivable subledger for international customers and vendors; supporting general ledger activities; seeking cost savings opportunities and performing process improvements for the tasks noted above; and other projects as assigned. The petitioner requires a "2-year degree" and desires a "4-year accounting degree or higher," and requires 3-5 years experience in accounts payable and general ledgers.

The director stated that the proposed position fails to qualify as a specialty occupation in that the petitioner requires only a 2-year degree for the position. The director found that the position, within the context of the petitioner's organizational structure, resembles a bookkeeper or an accounting clerk as described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). According to the director, the *Handbook* indicates that bookkeeping and accounting clerks do not require a bachelor's degree. The director stated that the proposed duties do not reflect those of a management accountant as described in the *Handbook*.

On appeal, counsel states that the proposed position is dissimilar from an accounting clerk and a bookkeeper. Counsel states that whether a position is professional is unrelated to the size of the company, the salary offered, or the prior history of maintaining the position. Counsel contends that the petitioner submitted evidence of its size, annual sales, number of employees, and its international aspect and the need for an accountant. Counsel contends that CIS approved similar petitions with the same educational requirements and job description that were previously filed on behalf of the beneficiary by other petitioners. Counsel states that deference should be given to an employer's view and that CIS should not rely simply on "standardized government classification systems," as stated in *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal. Mar 19, 1991). Counsel contends that according to *Tapis International vs. INS*, 94 F. Supp. 2nd 172, a position is professional if the position or the employer requires a degree or its equivalent in education and experience. According to counsel, a position can qualify as a specialty occupation based on the complexity of the duties alone. Counsel asserts that the court in *Full Gospel Portland Church vs. Thornburgh*, 730 F.Supp. 441 (D.D.C. Oct 17, 1988) stated that the vocations included in the term "professional" in our modern highly industrialized society are constantly expanding. Counsel states that the director's denial is a departure from prior precedent and CIS regulations.

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

As previously stated, section 214(i)(1) of the Act defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Here, the document in the record entitled "Position Description" reflects that the petitioner does not require a baccalaureate degree in a specific specialty for the proposed position: it indicates that the petitioner accepts a 2-year degree for the proposed position. Thus, the proposed position fails to qualify as a specialty as required by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A) of the regulations.

On appeal, counsel states that *Tapis International* indicates that the "or its equivalent" language in section 214(i)(1) of the Act and in 8 C.F.R. § 214.2(h)(4)(iii)(A) of the regulations should be considered when determining whether the proposed position qualifies as a specialty occupation. The AAO disagrees. In *Tapis International* the plaintiff required for its position a bachelor's or higher degree in business administration as well as specialized training or experience in the field of design. The *Tapis International* court stated: "Plaintiff Tapis has submitted undisputed evidence that it requires a bachelor's degree from a limited number of academic fields (marketing or business) in addition to specialized design experience." *Tapis International* at 176. Unlike the plaintiff Tapis, the petitioner here does not require a baccalaureate degree for its accountant position. It states that a "2-year degree" is required and that a "4-year accounting degree or higher" is "[d]esired." It is noted that the *Tapis International* court stated that the "or its equivalent" language applies where a specific degree is not available in a field, and that "the only possible way to achieve something equivalent is by studying a related field or (fields) and then obtaining specialized experience." *Tapis International* at 176. The instant position primarily involves accounting duties. Baccalaureate degrees in accounting or related fields are widely available through U.S. universities. Thus, the "or its equivalent" language would not apply here.

Given that the petitioner does not require a bachelor's degree in a specific specialty for the proposed position, *Unico American Corp.* and *Full Gospel Portland Church* are not persuasive in establishing the proposed position as a specialty occupation.

As the petitioner does not require a baccalaureate degree in a specific specialty for the proposed position, it fails to establish any of the criteria 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 proposed 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.