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**U.S. Citizenship
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Services**

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FILE: WAC 04 137 51109 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded to the director for entry of a new decision consistent with this opinion.

The petitioner is an environmental testing laboratory 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 basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's two requests for additional evidence; (3) the petitioner's responses to the director's requests; (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.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The petitioner, an environmental testing laboratory with 39 employees and gross annual income of \$3.05 million, was established in 1988. Counsel’s September 29, 2004 response to the director’s initial request for evidence stated that the beneficiary would spend 25 percent of his time performing audits and preparing financial statements; five percent of his time preparing quarterly and yearly financial reports; fifteen percent of his time monitoring information systems and compiling and analyzing financial information; five percent of his time detailing the company’s assets, liabilities, and capital; fifteen percent of his time advising and recommending regarding tax strategies; ten percent of his time establishing an accounting system; five percent of his time preparing financial records and reports; five percent of his time modifying and coordinating the implementation of accounting and accounting control procedures; seven percent of his time monitoring the company’s budgeting, performing evaluations, and managing costs and assets; five percent of his time analyzing transactions and preparing billing statements; and three percent of his time preparing letter correspondence.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a bookkeeping, accounting, or auditing clerk.

While some of the duties of the proposed position may reflect those of bookkeeping, accounting, and auditing clerks, the majority are those normally performed by accountants. The petitioner has submitted specific information regarding the details of the proposed position, and the AAO agrees with counsel that the proposed position is that of an accountant.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The totality of the evidence in this proceeding, including detailed information and documentation regarding the proposed duties, the petitioner’s business operations, and the petitioner’s organizational structure, establishes that the proposed position is that of a management accountant as described in the *Handbook*. According to the *Handbook*, such a position requires a bachelor’s degree in accounting or a related specialty. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

However, the petition may not be approved at this time, as the record does not demonstrate that the beneficiary qualifies to perform the duties of the specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary's education was obtained abroad, so he does not qualify under this criterion.

The second criterion requires a showing that the beneficiary earned a foreign degree determined to be equivalent to a United States baccalaureate or higher degree. However, an evaluation of educational credentials has not been submitted, so the beneficiary does not qualify under the second criterion, either.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is this fourth criterion under which the petitioner must classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under this criterion is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university

which has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the record contains no such evaluation.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under the third criterion, as no such evaluation has been submitted.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and (3) that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

According to the H Classification Supplement to the Form I-129, the beneficiary had accumulated seventeen years of experience as of April 15, 2004, the date the petition was filed. The AAO's next line of inquiry is therefore to determine whether the evidence of record clearly demonstrates (1) that this work experience (a) included the theoretical and practical application of specialized knowledge required by the specialty occupation; and (b) was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in accounting; and (2) that beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Counsel submits a letter from the [REDACTED] Corporation, the beneficiary's employer in the Philippines from April 1, 1982 until at least October 8, 1984. The letter states that the beneficiary worked as a branch accountant during this period. However, this letter does not establish that the work experience included the theoretical and practical application of specialty knowledge required by accountants, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that the beneficiary achieved recognition of expertise in the field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

The letters from the [REDACTED] Corporation dated May 1, 1986 and January 29, 1994 are not probative in this regard, as they regard employment that was to take place in the future, not work that had already taken place. As such, the AAO is unable to determine whether the beneficiary's experiences at this company included the theoretical and practical application of specialty knowledge required by accountants working at at least a bachelor's degree level of accounting, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that the beneficiary achieved recognition of expertise in the field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Nor does the letter from the [REDACTED] Corporation dated December 10, 2001 aid the AAO in its analysis under this regulation, as this letter simply commends the beneficiary for his good work. It does not, however, establish that the work experience included the theoretical and practical application of at least a bachelor's degree level of accounting knowledge, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that the beneficiary achieved recognition of expertise in the field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

Nor do any of the certificates of attendance at various conferences and workshops establish recognition of expertise in the field, as these certificates do not satisfy sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Therefore, the AAO is unable to find the beneficiary qualified to perform the duties of the specialty occupation at this time. However, the director did not address this issue in his denial. Therefore, the director's decision will be withdrawn and the matter remanded for the entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of this specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's December 8, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.