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FILE: WAC 05 041 50706 Office: CALIFORNIA SERVICE CENTER Date: NOV 28 2009

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 The director's decision will be withdrawn. The petition will be remanded for entry of a new decision.

The petitioner, a U.V. coating company with 25 employees and stated gross annual income of \$3 million, seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to extend the beneficiary's nonimmigrant classification as a 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). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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.

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, a U.V. coating company with 25 employees and stated gross annual income of \$3 million, was established in 1991. It proposes to continue its employment of the beneficiary as an accountant. In its November 2, 2004 letter of support, the petitioner states that the duties of the proposed position would include preparing, analyzing, and verifying the petitioner's quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports, and financial statements; handling the preparation of the company's general ledger and monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information to prepare entries into accounts; detailing the petitioner's assets, liabilities, and capital; providing tax planning advice; reviewing finances and current taxes; devising a long-term tax plan; recommending ways to reduce taxes; advising and recommending on tax strategies and advantages and disadvantages of certain business decisions or transactions; assuming responsibility for devising a financial system to enable the petitioner to establish a more systematic and smooth inventory procedure; preparing balance sheets, profit and loss statements, payroll, tax remittances, and other reports to summarize the petitioner's financial position; modifying and coordinating the implementation of accounting and accounting control procedures; monitoring the petitioner's budgeting, performance evaluation, and costs and assets management; preparing the petitioner's letters of correspondence with existing and prospective clients regarding transactions, financing, and billing statements; analyzing transactions; and preparing billing statements. The petitioner emphasized that a similar petition for the beneficiary had been previously approved, and stated that this extension of status petition involved the same parties, same underlying facts, and that there had been no change in circumstances or material errors.

In his denial, the director stated that although some of the proposed duties appear similar to those performed by accountants, the beneficiary would be performing basic bookkeeping and accounting clerical duties. Noting that accountants are not financial record keepers who maintain accounting records, the director did not accept the petitioner's contention that the proposed position is actually that of an accountant. The director also found that the petitioner lacked the "organizational complexity to certify a position for an accountant" and that it does not engage in the type of business for which an accountant would typically be required.

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.

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 occupation<sup>1</sup>;
- (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.

The record traces the beneficiary's work experience from January 1986. 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).

Such a demonstration has not been made. There is no evidence in the record to establish that at least 12 years of the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, that it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in the field; and whether the 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).

As such, 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 this specialty occupation at this time. However, the director did not address this issue. 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

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<sup>1</sup> *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).

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 April 15, 2005 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.