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U.S. Citizenship
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FILE: WAC 04 258 54566 Office: CALIFORNIA SERVICE CENTER Date: **SEP 28 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 director of the California 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 The director's decision will be withdrawn.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 the entry of a new decision.

The petitioner is a corporation that develops, manufactures, and markets polyethylene films, primarily from plastics. Established in 1987, the petitioner had 21 employees and \$3.7 million in gross income at the time of filing. It seeks to employ the beneficiary as an accountant 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 AAO concurs with counsel that the director erred in not finding that the proffered position is a specialty occupation; but the AAO finds that the evidence of record does not establish that the beneficiary is qualified to serve in that position. Accordingly, the director's decision shall be withdrawn, and the petition shall be remanded to the director for the entry of a new decision.

This decision is based upon the AAO's consideration of the entire record of proceeding before the AAO, including: (1) the Form I-129 (Petition for Nonimmigrant Worker) and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief.

The sufficiency of the evidence to establish a specialty occupation will be discussed first.

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.

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

An occupation which [1] 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 [2] 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO does not concur with the proposition that a position’s inclusion of bookkeeping and accounting clerk work or a petitioner’s lack of accounting clerk staff categorically precludes establishing a proffered position as that of a specialty-occupation-level accountant.

On the other hand, the petitioner’s contention to the effect that all accountants serve in specialty occupation positions is mistaken. The *Handbook’s* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.¹

In the instant case, the AAO finds that the totality of the evidence, including the descriptions of the proposed duties and the information about the petitioner’s particular business operations, income, and staffing, establishes that the proposed position is that of a management accountant operating at a level normally requiring at least a bachelor’s degree or the equivalent in accounting or a related specialty. Accordingly, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

However, the petition may not be approved at this time, because the evidence of record does not satisfy the requirements set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D) for establishing that the beneficiary is qualified to serve in the pertinent specialty occupation. As the director’s decision did not address the issue of the beneficiary’s qualifications, the director’s decision will be withdrawn, and the petition will be remanded to the director for entry of a new decision determining whether the beneficiary is qualified to serve in the proffered specialty-occupation accountant position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

¹ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require 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;²
- (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

² The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

and experience. . .

According to the express terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to satisfy this CIS-determination criterion, a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision states:

[I]t 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 occupation³;
- (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 documentary evidence of the beneficiary's formal education is limited to copies of: (1) a Chinese-language document and an English translation of that document as a certificate from the Jiangxi University of Finance and Economics (JUFE) in the People's Republic of China, indicating award of a bachelor's degree in Economics, with a specialty in Cost Analysis and Pricing, from the university's Department of Trade and Economy; (2) a Chinese-language document and an English translation of that document as a Jian Xi Finance Academy Undergraduate Student Report Card from that institution's Department of Management and Pricing; (3) a Chinese-language document and an English translation of that document as a certificate from Zhejiang University (ZU) indicating award of a Master's Degree in Economics by ZU; (4) a Chinese-language document and an English translation of that document as a ZU University Graduate School Graduate Student Report Card.

³ *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).

For the following reasons, the AAO finds that the above referenced documents do not establish the course completions and degree awards to which they refer. The documents do not merit consideration because the petitioner has not complied with this condition precedent to CIS' consideration of translated documents at 8 C.F.R. § 103.2(b)(3):

Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Furthermore, the translations are materially inconsistent. The translated certificate of the JUFEB bachelor's degree identifies the degree as issued (1) by JUFEB's Department of Trade and Economy, and (2) with a specialty in Cost Analysis and Pricing. However, the translated associated Student Report Card identifies its issuing institution as Jian Xi Finance Academy, not JUFEB. There is no evidence of record of the relationship, if any, between Jian Xi Finance Academy and JUFEB. Further, the translated JUFEB bachelor's degree certificate states that the degree was awarded by that university's Department of Trade and Economy; but the associated Jian Xi Finance Academy Undergraduate Student Report Card identifies only the Department of Management and Pricing.

Next, the accuracy, reliability, and evidentiary weight of the two educational evaluations submitted into the record are questionable for the following reasons.

The evaluations, both of which were issued by the same agency, appear to be based upon identical documents submitted by the petitioner, and are identical in all but their conclusionary statements. Yet, without explanation and evidence supporting the legitimacy of such, the agency has issued two different conclusions: initially, that the beneficiary's foreign education is the equivalent of a U.S. "Bachelor of Business Administration"; later, that the foreign education is the equivalent of a U.S. "Bachelor of Business Administration" with concentration in "Finance and Accounting."

The next evidentiary issue with the educational evaluations in the record is that they do not include the documents upon which they are based. Consequently, the evaluations are incomplete and, therefore, not amenable to a reasonable assessment of their relevance, credibility, and evidentiary value. In this regard, it is noted that the evaluation report does not list any enclosures or attachments other than the evaluator's resume.

Finally, to the extent that the evaluations are based upon the educational records that have been submitted into the record - which extent CIS cannot determine without the evaluation agency's providing the documents on which the valuations were based - the evaluations are unreliable, because of the evidentiary defects of those documents that are earlier discussed in this decision.

In light of the above deficiencies discussed above, the petitioner has failed to establish that the beneficiary is qualified under the regulatory provisions upon which the petitioner appears to rely, namely 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(2) and (D)(3), which together provide for establishing a foreign degree's U.S. equivalency by evaluation of the foreign education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The AAO also notes that the evidence of record does not appear sufficient to establish the beneficiary as qualified to serve in the pertinent specialty occupation by application of any other criteria of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) or (D).

As CIS had not previously questioned the beneficiary's educational qualifications, the director should now issue a request for additional evidence on whether the beneficiary possesses the credentials specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The director should afford the petitioner reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary. At a minimum, the director should request the petitioner to remedy the specific evidentiary deficiencies identified earlier in this decision. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's November 17, 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.