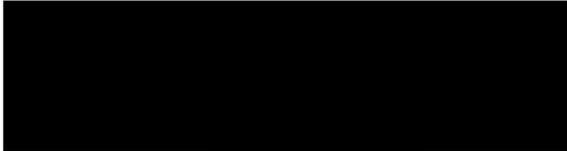




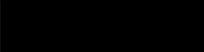
U.S. Citizenship
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MAR 08 2007

FILE: 
EAC 05 131 52726

Office: VERMONT SERVICE CENTER

Date:

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 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 corporation produces PVD materials, porous metal beaded coating materials, and thermal spraying materials. In order to employ the beneficiary as an accountant the petitioner filed this H-1B petition 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 two independent grounds, namely, (1) that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation; and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. On appeal, counsel contends that the evidence of record does not support either basis of denial.

As discussed below, the director's decision to deny the petition is correct. Accordingly, the appeal shall be dismissed, and the petition shall be denied. The AAO bases its decision upon its consideration of the entire record of proceeding, which includes: (1) the Form I-129 (Petition for Nonimmigrant Worker) and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and, on appeal, (5) the Form I-290B, counsel's brief in support of the appeal, and a copy of an Internet article entitled "the Master of Business Administration; is the MBA Worth the Time, Effort, and Cost?"

The specialty occupation issue will be addressed first.

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its March 5, 2005 letter of support, the petitioner stated that it has been operating since 1997, “importing and distributing PVD materials with product lines in metals, alloys, evaporation materials, and sputtering targets.” The letter also notes that the petitioner’s “capabilities include refining, melting, forging, machining, and sintering”: that it supplies PVD materials “to a number of markets including aerospace, electronics, optical, medical, and semiconductor industries”; and that it also “specializes in producing porous metal beaded coating materials using an advanced processing method.” The letter also provides some information about the petitioner’s production process, and it notes that it has recently acquired “a new 45,000+ sq. ft. spherical powder processing facility.”

The Form-129 states that the petitioner has three employees. The petitioner declined to provide its gross and net annual income, either in the spaces provided for that information on the Form I-129 or anywhere else in the record of proceedings.

Counsel’s submissions in response to the RFE include this information about the proffered position and its duties:

General Duties of Accounting at [the Petitioner]

Basic Purpose

Perform a variety of accounting and financial management functions such as inventory control; budget planning; compiling periodic financial statements and reports; calculating and verifying amounts of transactions; and posting transactions to accounts. Perform

specific accounting duties such as accounts receivable, payroll, and billing. Operate under minimal supervision and report to [the] President, requiring a Bachelor's degree in accounting or related field with bilingual ability and accounting experience.

Essential duties and Responsibilities

20% Reconcile bank accounts, post to and balance general or subsidiary ledgers, process payments and compile segments of monthly closings, periodic reports, etc.

20% Administer accounts payables and receivables functions:

- ★ Enter accounts payables and receivables into computer.
- ★ Run checks weekly, sorting and filing backups.
- ★ Post entries from cash book into accounts receivable sub-ledger.
- ★ Prepare invoices for reimbursable expenses.
- ★ Update outstanding checklist in Accounts Payable System.

10% Update accounting records.

20% Review and analyze relevant financial information for inventory control; review budget and budget planning for special projects. Analyze profit and loss performance, review actual outcome versus forecast and plan for special projects and prepare reports of past operations and financial forecasts.

20% Prepare balance sheet, profit and loss statements, and other reports. Close journal entries and general ledgers and prepare income statements and cash flow statements, including segments of monthly closing and periodic reports, and yearly reports.

As exemplified in the above list of duties, the petitioner has limited its information about the position and its duties to generic descriptions of general functions that do not establish the concrete matters upon which the beneficiary would work and the substantive accounting issues that he would confront in the context of the petitioner's business. Consequently, the record contains insufficient information for the AAO to reasonably ascertain the substantive nature of the beneficiary's work and to determine that it would require the practical and theoretical application of a highly specialized body of accounting knowledge and at least a bachelor's degree, or the equivalent, in accounting or a related specialty, as required by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

As earlier discussed, the evidence of record fails to provide sufficient information about the particular position and its duties to establish that their performance requires the application of at least a bachelor's degree level of knowledge in accounting or a related specialty. The record fails to establish where the proffered position stands along the educational-requirement continuum of accountant and other jobs that apply accounting knowledge. As indicated in the discussion below, neither the petitioner's designation of the position as accountant nor the record's generalized work descriptions establish that the proffered position is one that normally requires baccalaureate or higher degree, or the equivalent, in accounting or other specialty.

The AAO considered the information on accounting duties as presented in the 2006-2007 *Handbook* sections on accountants and auditors (pages 70-74) and bookkeeping, accounting, and auditing clerks (pages 434-435).¹ The totality of information in these sections establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, junior accountants, and accountant positions performed by persons without a bachelor's degree.

These excerpts from the *Handbook* illustrate the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

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.

(*Handbook*, page 435)

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 and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at www.stats.bls.gov/oco/. The AAO's references are to the 2006-2007 print edition of the *Handbook*.

set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

(*Handbook*, page 72)

The *Handbook's* narrative on Accountants and Auditors and the related "Sources of Additional Information" (SAI section) (page 74) indicate that persons may serve as accountants without a bachelor's degree in accounting or a related specialty.

The *Handbook* states that the Institute of Management Accountants (IMA) confers the Certified Management Accountant (CMA) designation upon persons who pass a four-part examination,² agree to meet continuing education requirements, and comply with standards of professional conduct. Applicants must have worked at least 2 years in management accounting and hold a bachelor's degree in any discipline. At its Internet site www.imanet.org/certification_started_education.asp, IMA states that the bachelor's degree may be "in any area, from an accredited college or university." The *Handbook* also references the Accredited Business Accountant® (ABA) certification awarded by the American Council for Accountancy and Taxation (ACAT).³ The related Internet site referenced at the *Handbook's* SAI subsection, www.acatcredentials.org, states that the ABA is "for practitioners who specialize in the needs of small-to-mid-size businesses and in financial services to individuals and families." 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 knowledge of the subject matter covered on the ACAT Comprehensive Examination."⁴ "Up to two" of the required years of work experience "may be satisfied through college credit." The Internet site of the Institute of Internal Auditors, www.theiia.org, which is also referenced at the SAI subsection of the *Handbook's* section, indicates that a bachelor's degree in any major will qualify a person to sit for its qualifying examination for Certified Internal Auditor®.

² According to the *Handbook*, the CMA exam provides an in-depth measure of competence in areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

³ At its Internet site (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.

⁴ The ACAT Internet site (www.acatcredentials.org/index) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

As indicated by the Internet site of the National Association of State Boards of Accountancy, accessible on the Internet at www.nasba.org, to sit for its Certified Public Accountant (CPA) examination, New Jersey, the location of the proffered position, mandates not just a college degree, but also a significant number of courses in accounting.

There is no evidence of record that the beneficiary would be applying CPA-level knowledge or, for that matter, any advanced accounting knowledge.

Because the evidence of record fails to establish the specific accounting work that the beneficiary would perform in the context of the petitioner's business, the substantive issues upon which he would work, and the level of highly specialized accounting or accounting-related knowledge that he would apply in the course of his work, the AAO finds that the petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The record does not provide a basis for the AAO to reasonably conclude that the proffered position is one that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong requires the petitioner to establish that the specialized degree requirement is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. There are no submissions from professional associations, firms, or individuals in the petitioner's industry. The record contains no evidence that satisfies the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The AAO here incorporates its earlier comments about the failure of the record to establish the specific work that the beneficiary would perform in the context of the petitioner's business. The evidence does not convey any aspects of the requisite complexity or uniqueness. Rather, it relates only generalized accounting functions that are not associated with a specific level of education in accounting or a related specialty.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), as the evidence of record does not demonstrate a history of normally recruiting and hiring for the proffered position only persons with at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier comments about the lack of concrete information about the work that the beneficiary would perform, the record does not develop the duties with sufficient specificity to establish the specialization and complexity required by this criterion. The record does not establish the complexities of the position through any financial documentation such as tax returns, wage records, debt structure, government regulation, or other information. 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 director was also correct in denying the petition on the basis that the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation requiring a degree in accounting or a related specialty.

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.

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;⁵
- (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 In accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of education only, not experience.

- (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. . .

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 imposes evaluation standards, stating:

[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 occupation⁶;
- (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 diplomas and academic transcripts in the record establish that the beneficiary holds University of South Carolina (USC) baccalaureate and master's degrees in Hotel, Restaurant, and Tourism Management. The transcripts reveal only one Accounting Department course at the baccalaureate

⁶ *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).

level - Fundamentals of Accounting II – and these other 3-credit-hour courses that appear to be related to accounting: Elementary Statistics (undergraduate); Hospitality Financial Management (undergraduate); and Hospitality Financial Methods (graduate). The transcripts indicate that USC awarded 12 hours of undergraduate credit for studies at Beijing Educational College, and 57 hours for studies at the Hotel Institute in Switzerland; however, the record does not contain academic transcripts evidencing the coursework for which credit was granted. In contrast to counsel's view, which is not supported by any evidence as to the actual content of the course, the AAO will not surmise, based solely on the course title, that the graduate course "Topic/Data Analysis" in the context of studies in Hotel, Restaurant, and Tourism Management is accounting related. The academic courses pursued and knowledge gained must be a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he obtained knowledge of the particular occupation in which he will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The petitioner has failed to establish that the coursework taken by the beneficiary and the knowledge gained is a prerequisite to the field of accounting. Further, the record does not contain evidence of accounting-related experience or training that would merit CIS recognition of additional college-level credit under any criterion at any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

The record provides no basis for disturbing the director's decision that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.