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U.S. Citizenship
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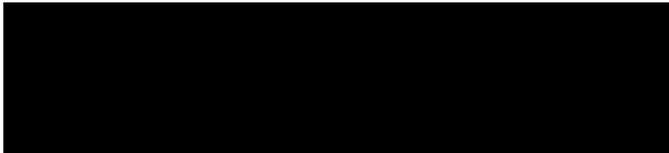
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FILE: WAC 03 168 53413 Office: CALIFORNIA SERVICE CENTER Date:

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 of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer and wholesaler of jewelry. It seeks to employ the beneficiary as an accountant and to classify her 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 record did not establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a jewelry manufacturer and wholesaler that proposed to hire the beneficiary as a part-time accountant working 30 hours/week. In the petitioner's offer of employment letter to the beneficiary, which was submitted with the petition, and in the petitioner's subsequent response to the RFE, the duties of the proffered position were described as follows:

- Prepare and analyze financial information vital to the company's financial well-being.
- Prepare regular financial reports such as balance sheets, profit and loss statements, and other reports summarizing company's current and projected financial position.
- Analyze overhead spending, bank reconciliation, revenue forecasts, and budget projections on regular basis.
- Monitor, review, and implement accurate system of financial recording and journal entries at close of each accounting period.
- Advise management and recommend action to ensure sound and orderly financial management of the company.
- Monitor and analyze accounts payable and accounts receivable.
- Aggregate and maintain database necessary to perform budget review and analysis.
- Review and analyze budgetary estimates; actual vs. budget performance; and explain variances for management review.
- Support top management in evaluation and implementation of corporate level financial management planning, and corporate financial management reporting.

According to the petitioner the minimum requirement for the proffered position was a bachelor's degree in business administration or commerce, preferably with a major in accounting, and work experience in general accounting and financial analysis. The record indicates that the beneficiary graduated from the Polytechnic University of the Philippines with a bachelor of accountancy in April 1990. According to her curriculum vitae the petitioner worked thereafter for ten years in a Filipino bank as a teller, supervising teller, and operations officer, and then took an accounting position with another company in the Philippines. The petitioner also submitted additional documentation including copies of its federal income tax returns, various business records, an organizational chart, company brochures, and assorted evidence of the beneficiary's educational and employment background.

The director found that the duties of the proffered position, as described by the petitioner, reflected the duties of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, rather than the duties of an accountant. The director cited information in the *Handbook* indicating that a baccalaureate degree is not a normal, industry-wide minimum requirement to enter into a bookkeeping, accounting, or auditing clerk position. The evidence of record failed to demonstrate, the director declared, that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education. The duties and responsibility level of the proffered position did not indicate complexity or authority beyond that normally encountered in the field of bookkeeping, accounting, or auditing clerks, the director continued, and there was no evidence that the petitioner normally required applicants for the position to have a baccalaureate degree in a specific specialty. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties

and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel asserts that the duties of the proffered position accord with the description of accountants in the *Handbook*, as well as another DOL resource, the *Dictionary of Occupational Titles (DOT)*, and that an accountant requires a baccalaureate degree in a specific specialty, making the proffered position a specialty occupation. While acknowledging that some of the duties could be performed by a bookkeeping or accounting clerk, counsel contends that other duties are too complex for a bookkeeping or accounting clerk and require the expertise of an accountant.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Most accounting positions, as indicated in the *Handbook*, require a bachelor's degree in accounting or a related field. See *id.* at 70. Accountants, therefore, qualify as a specialty occupation under the Act. By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial

statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

Handbook, id., at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.*

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree in accounting or a related specialty. The petitioner's organizational chart indicates that two of its five positions already deal with financial matters, including the finance manager responsible for "finances and inventory" and the financial analyst responsible for the "financial status of the company." The petitioner has not provided a detailed description for those positions, but they appear to overlap with the duties the accountant would perform. The petitioner's federal income tax return for 2002, the year before the instant petition was filed, lists accounting expenses that year of \$8,535. Tax returns for the two previous years did not list any accounting expenses. Thus, the tax returns do not indicate a level of accounting activity for which the petitioner will employ an accountant for 30 hours/week.

Based on the evidence of record, the AAO determines that the petitioner has failed to establish that the beneficiary would perform the services of an accountant in the proffered position. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field. The AAO agrees with the director that the duties of the position as described in the petitioner's various submissions are not so complicated or specialized that they could not be performed by an experienced bookkeeping, accounting, or auditing clerk. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into such a position. The proffered position, therefore, does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has not submitted any evidence that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As far as the record shows, the duties of the position at issue in this case do not exceed those normally encountered in the occupational field of bookkeeping, accounting, and auditing clerks, which do not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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