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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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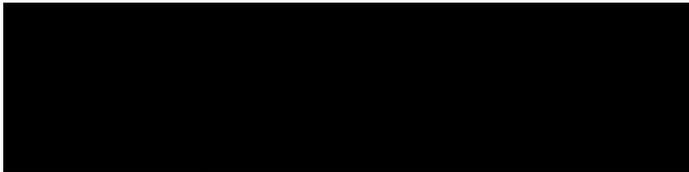
FILE: WAC 03 208 50924 Office: CALIFORNIA SERVICE CENTER Date:

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)

AUG 25 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 is a wholesaler of women's clothing, with 5 employees. 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 director denied the petition because he determined the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) 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) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 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 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 petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the June 9, 2003 letter of support provided by the petitioner at the time of filing; and the petitioner’s March 24, 2004 response to the director’s request for evidence. As described by the petitioner, the duties of the proffered position would require the beneficiary to:

- Apply the principles of accounting to analyze financial information detailing assets, liabilities and capital; and establish and modify documents and implement accounting procedures (50 percent of the beneficiary’s time) – analyze financial information and prepare financial reports for review by a senior team member; read, research and analyze financial data; assist the senior accountant in basing decisions on actual data; and ensure that accounting is run more efficiently, records kept accurately and taxes paid timely;
- Prepare balance sheets, profit and loss statements, and other reports to summarize current and projected financial position (15 percent of the beneficiary’s time) – help the petitioner realize the maximum benefit from its investment; enter accounting data into computer terminal to store, retrieve, and manipulate data for analysis; analyze balance sheet, profit and loss statements to determine company’s current position; and analyze existing financial information and financial reports to prepare the projected company position;
- Audit contracts, orders and vouchers (5 percent of the beneficiary’s time) – research/audit contracts, various orders and vouchers; use strategic planning; and analyze and interpret financial information to make sound business decisions;
- Prepare yearly and monthly financial reports; and prepare reports to substantiate customer’s transactions prior to settlement (10 percent of the beneficiary’s time) – analyze and prepare budgetary projection reports for the senior accountant’s approval; provide in-depth analysis and prepare reports regarding individual transactions to determine whether the specific settlement is advisable and best suited;

- Devise and implement computer based systems for general accounting (10 percent of the beneficiary's time) implement a computer-based system for general accounting, using existing accounting software; test, modify and implement new or existing computer software to summarize financial records for managerial review; and
- Compile financial information to prepare entries to accounts such as general ledger accounts; and document business transactions (10 percent of the beneficiary's time) – plan and prepare a new accounting system or modify the existing system; analyze information to determine, recommend, and plan layout for ledger accounts and business transactions, or modifications to existing accounts and transactions; provide prognosis as to liabilities and capital, efficient operation and effective use of existing data; provide detailed analysis of current operational procedures; and diagnose problems and recommend solutions.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

The 2004-2005 edition of the *Handbook* identifies four major fields of accounting: public, management, government, and internal. Of these, management or private accountants appear to be the field most closely related to the proffered position. As described at pages 68-69, management accountants:

[r]ecord 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.

The director in his denial identified the duties of the proffered position as being more aligned with those performed by bookkeeping, accounting, and auditing clerks. This employment is described in the *Handbook* at pages 437-438:

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

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.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

. . .

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. These workers post transactions in journals and on computer files and update the files when needed They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

Having reviewed the duties of the proffered position and the discussion provided by the *Handbook*, the AAO, like the director, concludes that the proffered position is most closely aligned to the occupation of bookkeeping, accounting and auditing clerks. However, it differs from the director with regard to certain of his conclusions concerning the work performed by accountants and the petitioner's need for an accountant. It finds the director's decision too narrowly defines the work of accountants, who, as stated by the *Handbook*, do record financial information for the organizations employing them. Moreover, it does not find the record to establish that the petitioner's business is not of the type or scale and complexity to require an accountant. There is nothing in the *Handbook* to indicate that accountants are not employed within the women's apparel industry. Further, there is nothing in the record to indicate that the duties to be performed by the beneficiary are related to the size of the petitioner's organization, i.e., to involve any tasks regarding payroll or employee benefits, etc. Instead, they appear tied to the tracking and recording of income and expenditures, and the review of business transaction records.

On appeal, counsel references the discussion of accounting in the *Dictionary of Occupational Titles (DOT)* as one indication of the thinking of the U.S. Government regarding this type of employment, although she acknowledges that CIS does not consider the *DOT* to be a persuasive source of information for occupational degree requirements. She points to the *DOT's* statement that an accountant "[c]ompiles and analyzes financial information to prepare entries to accounts," as proof that it is absolutely normal for an accountant to compile and analyze financial information and that these responsibilities are not clerical in nature. As noted above, the AAO agrees that accountants compile and analyze financial information for their employers. It also acknowledges that the proffered position would require the beneficiary to have some knowledge of accounting principles. However, the decisive question is not whether the petitioner's position requires knowledge of accounting, but whether it normally requires the level of accounting knowledge that is acquired only through the completion of a bachelor's degree in accounting or its equivalent. The AAO's review of the

duties of the proffered position does not find them to require the level of knowledge possessed by an accountant.

Instead, the AAO finds the petitioner to have described a position with a range of recordkeeping duties, as well as duties that support the recordkeeping activities of the petitioner. The beneficiary would be required to prepare balance sheets, profit and loss statements, as well as compile other financial information; audit contracts, order and vouchers; and set up a new, computerized accounting system. These are responsibilities assigned to full-charge bookkeepers who perform a range of accounting functions in their work. As stated by the *Handbook* at page 438, bookkeepers are routinely called upon to do work that might, otherwise, be performed by an accountant. The AAO also notes that the beneficiary would be required to perform certain types of financial analysis for the petitioner and to prepare financial reports based on that analysis. Again, these activities appear to be on a level with those performed by bookkeepers who routinely prepare financial reports and summaries for their supervisors and managers, rather than the type of analysis carried out by accountants.

Moreover, while management accountants are certainly required to record and analyze the financial information of the companies for which they work, their responsibilities extend beyond these requirements, being much broader and more complex than those outlined in the petitioner's job description. As noted by the *Handbook*, accountants routinely have responsibility for performance evaluation, cost management, and asset management, and they not only analyze financial information for the organizations employing them, but interpret that information as well.

Accordingly, the AAO concludes that the proffered position is that of a full-charge bookkeeper or, perhaps, an intermediate position between a bookkeeper and an accountant. In light of the petitioner's references to the senior accountant who will oversee at least some of the beneficiary's work, the AAO finds that the proffered position might also be characterized as that of a junior accountant.

The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping and accounting clerks:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

Educational requirements for junior accountants are discussed at page 71:

Many graduates of junior colleges and business and 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.

As entry-level employment for both bookkeepers and junior accountants may be obtained without a baccalaureate degree or its equivalent, the AAO concludes that the proffered position cannot be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel submits an expert opinion from a university professor who, based on his review of the proffered position's duties, finds them to impose a degree requirement on the beneficiary. However, while the professor's opinion is relevant to these proceedings, it cannot establish the proffered position as a specialty occupation under the first criterion.

The evaluation has been submitted without independent evidence to substantiate the author's stated expertise to evaluate the nature of the proffered position. Although the professor asserts his evaluation of the petitioner's employment is based on his extensive academic experience, that experience is not independently supported. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See 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)). Further, the professor's evaluation is based on a review of duties that have already been considered by the AAO and found not to be those of an accountant. CIS uses expert evaluations as advisory opinions only. Where an expert opinion is not in accord with other information or is in any way questionable, CIS may discount or give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). For both these reasons, the AAO has found the professor's opinion to carry little evidentiary weight.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the three remaining alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the proffered position as a specialty occupation under the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the petitioner submitted 16 Internet job announcements in response to the director's request for evidence. Of the 16 on-line advertisements, however, none described businesses or operations similar to the petitioner's. As a result, they do not satisfy the requirements of the criterion's first prong. The record also fails to establish the proffered position as being so complex or unique that it can be performed only by a degreed individual, as required by the second prong. Accordingly, the proffered position cannot be established as a specialty occupation under the second criterion.

On appeal, counsel asserts that the petitioner attempted to identify similar businesses with parallel positions, but was unable to do so because of confidentiality concerns on the part of the companies it contacted. She contends that, as the petitioner does not control Internet advertisements, it should not be penalized for failing to locate an exact match among the on-line advertisements. The AAO notes that, while the petitioner may

have experienced difficulty in identifying businesses similar to itself on the Internet, there are alternative ways in which to document an industry-wide degree requirement, including published reports on the industry, which discuss degree requirements, or statements from a professional association(s) within the petitioner's industry.

Counsel also relies on the expert opinion, already discussed, to establish the petitioner's degree requirement as a norm within its industry, noting that the author found it "usual practice" for companies similar in size and industry to the petitioner to hire accountants. The AAO does not find the professor's opinion to satisfy the requirements of the second criterion. Although the professor states his opinion is based on his academic experience, that experience, as already noted, is not independently supported. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See 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)). Further, the evaluation lacks a factual foundation and an analytical basis. It offers no information regarding the author's review of the petitioner's industry, nor the analysis on which he based his opinion. As a result, the AAO finds the opinion's statements regarding industry practice to have little evidentiary weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To establish the proffered position as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO generally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the record contains no evidence of the petitioner's past hiring practices. Although the petitioner has imposed a degree requirement on the proffered position, that degree requirement does not establish the petitioner's normal hiring practices. Accordingly, the petitioner cannot satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel contends that the duties of the proffered position do meet the specialized and complex threshold established by the fourth criterion. She, once again, offers the expert opinion of the university professor as proof that the duties of the position are usually associated with the attainment of a baccalaureate or higher degree. Counsel's evidence is not persuasive.

For the reasons already discussed, the AAO finds the expert opinion referenced by counsel to have little evidentiary weight. CIS uses expert evaluations as advisory opinions only. Where an expert opinion is not in accord with other information or is in any way questionable, CIS may discount or give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Moreover, the AAO's review of the duties of the proffered position has not found them to require the beneficiary to possess a higher degree of

knowledge and skill than would normally be required of a full-charge bookkeeper or junior accountant or to represent an amalgam of jobs that would require the beneficiary to possess a unique set of skills and qualifications. Accordingly, the proffered position cannot be established as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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