

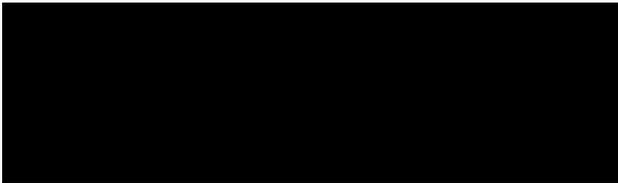
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 023 53819 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

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 sustained. The petition will be approved.

The petitioner is a healthcare management company. It seeks to employ the beneficiary as a senior accountant and to classify him 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 proffered position did not qualify as a specialty occupation. The director found that many of the duties of the position were those of a bookkeeper, which was not 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 two requests for evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

As explained in Form I-129 and the documentation submitted with the petition, the petitioner provides healthcare management services to the ancillary care (*i.e.*, non-hospital) sector of the healthcare industry. The company was established in 1995 and by 2003, when the instant petition was filed, had 88 employees and annual revenues of over \$12 million by 2003. The petitioner stated that it sought the beneficiary's services as a senior accountant to handle various accounting duties relating to cash flow forecasting and financial analysis. The job announcement accompanying the petition listed the essential functions of the position as follows:

- Oversee general accounting systems and maintain general ledger.
- Responsible for accurate and timely recording and reporting of all financial transactions.
- Ensure that all account analyses and bank reconciliations are prepared on a timely basis and review reconciliations for accuracy.
- Review the accounting treatment of transactions to ensure they are in accordance with GAAP.
- Research account detail and prepare adjusting journal entries when needed.
- Identify and implement process improvements.
- Monitor the company's cash positions and perform weekly cash flow forecasts with recommendations to senior management.
- Manage weekly standard reporting package preparation.
- Manage month-end close process and generate accurate balance sheet, profit and loss and cash flow statement.
- Review balance sheet and profit and loss statement for accuracy and reasonableness.
- Research and document financial results compared to budgets and prior periods.
- Prepare the monthly financial close package and management reports.
- Prepare audit schedules and interface with auditors to resolve issues.
- Assemble information needed for tax filings.
- Support the Accounting Manager in performing financial analysis and participate in special projects and perform additional duties as required.

The job announcement stated that a qualified candidate for the job must have a bachelor's degree in an accounting-related field. Documentation submitted with the petition showed that the beneficiary earned a master of business administration (M.B.A.) with emphasis in accounting from California State Polytechnic University in Pomona on June 14, 2003. In two subsequent RFEs the director asked the petitioner for the following additional evidence: a detailed job description of the proffered position; the petitioner's past employment practices for the position; the petitioner's articles of incorporation and business license; as well as the petitioner's organizational chart showing its hierarchy and staffing levels, the names and job titles of all executives, managers, supervisors, and employees, including the beneficiary's position, and a brief description of every employee's job duties, educational level, annual salary/wages, and immigration status. The petitioner responded to the RFEs with documentation addressing the director's evidentiary requests.

In his decision the director found that while some of the duties of the proffered position involved accounting tasks, a significant amount of the beneficiary's time would be spent performing the duties of a bookkeeper, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which did not require a baccalaureate or higher degree. In the director's view, there were

three particular evidentiary shortcomings in the materials submitted in response to the RFEs. First, the organizational chart showed several accountant positions (two already in existence, a senior accountant and a staff accountant, with the proffered position representing another senior accountant) but no bookkeeping or payroll clerk position. The director concluded that such duties "would clearly be part of the duties" of the proffered accountant position. Secondly, the director referred to the employment application and resume of the petitioner's existing senior accountant, submitted to show that the petitioner has a practice of hiring individuals with baccalaureate or higher degrees for the position, and indicated that there was no documentation confirming that the individual was currently employed by the petitioner. Thirdly, the director stated that without documentary evidence such as previous job announcements or employment records the petitioner had not clearly established that it normally requires applicants for the position to possess baccalaureate or higher degrees in the field. In the director's view, the record did not demonstrate that the proffered position could not be performed by an experienced individual with educational training of less than a baccalaureate degree. Based on the foregoing considerations, the director determined that the proffered position was not a specialty occupation.

On appeal the petitioner's accounting manager, Nate Schmidt, addressed the evidentiary concerns discussed by the director and submitted additional documentation. With regard to the issue of who performs the company's bookkeeping and payroll functions, Mr. Schmidt stated that the staff accountant, Chad Williams, performs most of the bookkeeping duties as described in the DOL *Handbook* while the human resources manager, Debbie Luna, is responsible for processing payroll. Mr. Williams' resume was submitted, showing that his jobs prior to his current position with the petitioner included many bookkeeping functions. The AAO notes that the petitioner's chart of employee positions and job duties, previously submitted, indicated that Mr. Williams' current duties as staff accountant included some bookkeeping functions such as being "[r]esponsible for accounts payable and check disbursements," and also clearly stated that Ms. Luna is responsible for payroll and related functions. With respect to the current employment status of the senior accountant, Shu Ching Yeh, the petitioner submitted a letter co-signed by her and Mr. Schmidt, dated January 20, 2004, verifying that Ms. Yeh has been employed in that position since September 2001. The petitioner also submitted a photocopy of the Employment Eligibility Verification (Form I-9) completed for Ms. Yeh in September 2001, co-signed by Ms. Yeh and the petitioner's human resources manager, Debbie Luna. As evidence that it normally requires applicants for the senior accountant position to have baccalaureate or higher degrees in the field, the petitioner submitted a photocopy of Ms. Yeh's master of science in accounting from California State University in Los Angeles, granted in 1991. Finally, the petitioner submitted a time allocation chart detailing the percentage of time the beneficiary would spend on the various duties of the proffered position. It reads as follows:

1. Managing and preparing weekly and monthly standard reporting packages (financial statements preparation and reviews of profit & loss, cash flow, and balance sheet statements) – 30%
2. Performing financial statements analysis – 20%
3. Identifying and implementing process of improvement (cost management) – 10%
4. Preparing audit schedules and interfacing with (outside) auditors – 8%

5. Performing special projects:
 - Cash fixed and intangible assets management – 13%
 - Departments budget analysis – 10%

6. Handling tax related issues, maintaining G/L, and researching accounts – 10%

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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.

The AAO finds that the duties of the proffered position in this case accord with the *Handbook's* description of an accountant. That description reads, in pertinent part, as follows:

Accountants and auditors help to ensure that the Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services to their clients . . . includ[ing] public, management, and government accounting, as well as internal auditing. Beyond the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services

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.

Handbook, 2004-05 edition, at pages 68-69. Based on the entire record, including a company brochure discussing the nature and extent of the petitioner's management services, the extensive information provided about the petitioner's organization, personnel, and salary structure, and the specificity of the described duties and required competencies of the proffered position, the AAO determines that the

beneficiary will be performing the services of an accountant. The *Handbook* goes on to state (at page 70) that most accountant positions require at least a bachelor's degree in accounting or a related field. The AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria 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.

As previously noted, the beneficiary earned an M.B.A. with emphasis in accounting from California State Polytechnic University in Pomona in June 2003, five months before the instant petition was filed. Accordingly, the AAO determines that the beneficiary is qualified to perform the services of the pertinent specialty occupation – an accountant – in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

ORDER: The appeal is sustained. The petition is approved.