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20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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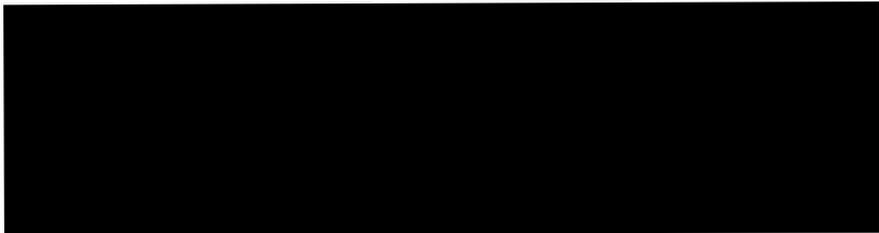
FILE: WAC 04 253 53420 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2006

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.

*Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 fabrics manufacturer that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors 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 finding that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 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) the 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) the Form I-290B, the brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services in a position entitled accountant that the petitioner asserts requires a bachelor's degree in commerce with a major in accounting. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. These documents describe the proposed duties in exclusively generic terms, such as: compiling and analyzing information using accounting software solutions for documenting business transactions and preparing entries to accounts such as the general ledger; analyzing financial information detailing assets, liabilities, and capital for the preparation of balance sheets and profit and loss statements; processing, maintaining, and monitoring daily accounts payable and accounts receivable records; reconciling bank statements and updating journal entries and adjustments and month-end reports; preparing comparative analysis to compare import transactions from different countries, price movements, and revenues generated from such transactions. As so generically and abstractly described, the duties do not establish the level of accounting knowledge required in practice, that is, when actually performed upon this particular petitioner's actual business matters, about which the record contains little substantive information. This lack of information about the actual performance of the duties also makes it impossible for the AAO to gauge the complexity or specialization that generalized accounting functions might attain when practiced in the proffered position.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation. The director stated that the petitioner has one accounts payable clerk, and that it does not have bookkeepers and accounting or auditing clerks. Thus, the director found that although the proposed position requires some financial analysis, the actual primary duties to be performed by the beneficiary are more closely aligned with those of a financial clerk. The director discussed *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), a case addressing the reliability of evidence. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity or type or scale of business that requires the services of an in-house accountant. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner employs an accounts clerk for data entry and uses Peachtree software to automate bookkeeping. According to counsel, the petitioner needs an accountant for analyzing and preparing records. Counsel states that the *Handbook* confirms that in-house accountants work for many different types of businesses. Counsel cites the *Handbook*, the *DOT*, and the *Standard Occupational*

*Classification Occupational Information Network (SOC O\*NET)* to show the offered position resembles an accountant. According to counsel, *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), indicates that the size of a business is irrelevant in determining whether a position qualifies as a specialty occupation.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers 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; 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 often considered by CIS when determining these criteria 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)).

The AAO concurs with counsel's statement that the *Handbook* reflects that in-house accountants are employed by different types of businesses; and that in determining whether a position qualifies as a specialty occupation the size of a business is irrelevant. However, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

Counsel's reference to and assertions about the relevance of information from the *SOC O\*NET* and the *DOT* to show that the proposed position qualifies as a specialty occupation are not persuasive. Neither the *DOT's* specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification specifies the particular type of degree that an occupation would require.

The *Handbook*, a resource that the AAO routinely consults, explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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, and cost 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.

Counsel contends that the position requires a bachelor's degree in commerce with a major in accounting. However, the petitioner must do more than submit a generalized job description and assert that the position requires a degree in a specific specialty. The petitioner must submit evidence supporting its contentions.

The AAO finds that the submitted evidence provides no factual basis to determine whether the offered position is one that normally would require a bachelor's degree (or its equivalent) in accounting or a related specialty. The record contains a financial statement (dated December 31, 2003) that indicates on page seven that in the year 2000 the petitioner became a single member limited liability company (LLC) fully owned by Unitex Industries, Inc. Although the title page of the financial statement is depicted as relating to the petitioner, the financial document pertains to Unitex Industries, Inc.; it does not relate to the petitioner. For example, the revenue shown on page four of the document was not generated by the petitioner; it was earned by Unitex Industries, Inc. Likewise, the submitted Form 1120S pertains to Unitex Industries, Inc., not the petitioner. The Form 8800, which does relate to the petitioner, indicates the petitioner requested additional time to file a tax return. The DE-6 records do pertain to the petitioner: they show wages of \$153,000 for the quarter ending 6/30/2004. Given that the submitted information primarily pertains to Unitex Industries, Inc., the record lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. For instance, there is no information about the types and volume of the petitioner's transactions, the nature of its financial statements and records, the spectrum of costs to be managed by the beneficiary, the extent of the petitioner's financial dealings, the range and scope of the petitioner's financial records, the specific types of data that the beneficiary would analyze, the size of the petitioner's budget, or the number of the its budget elements, or the nature of the comparative analysis. There is no evidence of previous budgets or financial documents illustrating a scope or depth of financial transactions and operations. This lack of financial information is in addition to the previously stated lack of information about the specific performance of the proposed duties. 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)). Consequently, the petitioner failed to demonstrate a factual basis in which to establish that the offered position is one that normally would require at least a bachelor's degree (or its equivalent) in accounting or a related specialty.

The fact that a position involves accounting principles is insufficient to establish it as a specialty occupation, for not all positions entitled accountant or applying accounting principles require the application of a bachelor's degree level of knowledge in accounting or a related specialty. For instance, the *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).<sup>1</sup> That Internet site reveals that a

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<sup>1</sup> At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT

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.”<sup>2</sup> “Up to two” of the required years of work experience “may be satisfied through college credit.”

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed earlier in this decision, the record lacks sufficient evidence to establish that the proposed duties are complex or unique, thereby requiring a baccalaureate degree in accounting or a related field. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that 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. As indicated earlier in the discussion about the generically stated nature of the proposed duties, the record lacks sufficient evidence that would establish that they are so specialized and complex as to require a bachelor’s degree in accounting or a related field. Consequently, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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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.

<sup>2</sup> The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

As related in the discussion above, 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.