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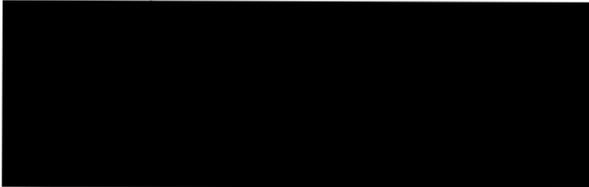
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 178 51104 Office: CALIFORNIA SERVICE CENTER Date: **JUN 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:

SELF-REPRESENTED

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

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a full-time accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 11, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: devising and installing special accounting systems and related procedures; conducting a survey of the petitioner's operations to determine its needs; setting up a classification of accounts; organizing accounting procedures and "machine methods support"; recommending cost control procedures by analyzing the petitioner's profitability, income, major expense categories, and capital expenditures; preparing budgets, balance sheets, and monthly and year-end financial statements; reconciling bank statements and accounts payable and receivable balances; maintaining accounting records; and performing accounting activities such as recording, disbursements, expenses, and tax payments. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in commerce with a major in accounting.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping, accounting, or auditing clerk position. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states, in part, that the director did not address the evidence. According to the petitioner's president/administrator, the petitioner, which is a corporation with four healthcare facilities, has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). She states further that the proffered position is that of a full-time accountant, and is not a bookkeeper position. She also states that it already has a part-time accountant to perform all of the bookkeeping and clerical duties related to accounting procedures.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first 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; 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the petitioner that the proffered position is that of an accountant. The *Handbook*, 2006-2007 edition, reveals that specific job duties vary widely among the four major fields of accounting: public, management, government accounting, and internal auditing. 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.

In this case, information on the petition reflects that the petitioner is an intermediate care facility for developmentally disabled children and adults with 14 employees and a gross annual income of \$801,808. In the petitioner's October 12, 2004 letter, the petitioner's president/administrator stated that the beneficiary would assist management officials in applying financial data and information to solve administrative and operating problems. As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.¹ 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).² 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

¹ According to the website for Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

² At its Internet site (<http://www.n sacct.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.

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.”³ “Up to two” of the required years of work experience “may be satisfied through college credit.”

The evidence of record fails to convey that the beneficiary’s specific performance of the record’s list of generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor’s degree or the equivalent in accounting or any other specific specialty.⁴ Furthermore, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary’s proposed duties. Responsibility for the financial transactions described above differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. The petitioner’s assertion on appeal that the proffered position is that of a full-time accountant is noted. However, 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 fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The duties described in the *Handbook* do not primarily apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, the scope and complexity of the beneficiary’s duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor’s degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position. A review of the *Handbook* finds that the proposed duties are primarily the duties of bookkeeping, accounting, auditing and financial clerks. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for these positions.

The petitioner also submitted two Internet job postings for accountants. This information is not convincing evidence that the proffered position is a specialty occupation in this case, as the petitioner has not established that the proffered position is for an accountant. Further, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions, such as providing timely and accurate financial information to the vice president of finance, board of directors, and auditors, and supporting the vice president of finance in management duties. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is the industry standard for the proffered position.

³ 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.”

⁴ These duties entail primarily the business or accounting associate degree-level activities listed on the Skyline College website.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, the petitioner’s president/administrator states that the record contains evidence that the petitioner’s part-time accountant holds a related bachelor’s degree. The petitioner’s creation of a position with a perfunctory bachelor’s degree requirement, however, will not mask the fact that the position is not a specialty occupation. 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 or 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.⁵ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner’s self-imposed employment requirements, then any alien with a bachelor’s degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

⁵ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.