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**U.S. Citizenship
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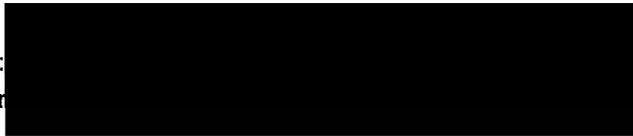
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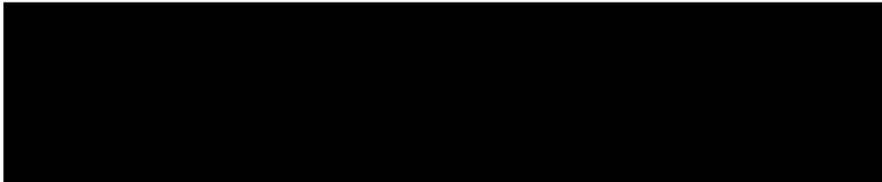
FILE: WAC 04 145 51175 Office: CALIFORNIA SERVICE CENTER Date: **MAR 08 2008**

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 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 news publication providing media related services to the Filipino-American community in the United States and Canada, with 22 employees. It seeks to extend its employment of 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the 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 petitioner’s April 12, 2004 letter in support of the petition; and an April 15, 2004 letter from counsel also submitted in support of the Form I-129. As stated by the petitioner, the duties of the proffered position would require the beneficiary to:

- Apply principles of accounting to perform complex accounting and accounting analyses in order to make recommendations to the petitioner regarding cost efficiency of its operations;
- Prepare operating and financial models, and develop business plans, including income, expense and cash flow projections, for expansion plans;
- Recommend, develop and implement annual and quarterly budgets, and establish accounting control procedures to enhance efficiency, improve the current accounting system and better coordinate accounting matters;
- Manage all aspects of asset accounting, including accounts receivable and accounts payable, and ensure compliance with the petitioner’s financial policies;
- Ensure compliance with Generally Accepted Accounting Principles and take the lead role in year-end CPA audits;
- Develop efficient procedures for various financial matters such as billing and collecting, and control of outstanding accounts receivable; and
- Perform project management for special projects, as required.

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)).

In his denial, the director found the duties described by the petitioner to reflect many of those performed by accountants, but determined that the petitioner did not have the type of business or the organizational complexity and scale to require the services of a full- or part-time accountant. While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary as an accountant, it has reached its conclusions on grounds other than those relied upon by the director.

The AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity, nor operate the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the “Nation’s firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time.”¹ It does not indicate that accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, government agencies or academic institutions, as stated by the director. Accordingly, the petitioner’s intention to employ an accountant may not be discounted based on its type of business. Neither does the fact that the petitioner does not have an accounting/bookkeeping staff establish that it would not employ the beneficiary to perform the duties of an accountant. Therefore, the AAO withdraws the director’s findings in this regard.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner’s characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.²

The AAO finds the above discussion to be generally reflected in the petitioner’s description of the duties of the proffered position and agrees that the petitioner’s employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proffered position would impose a degree requirement on the beneficiary. The question is not whether the petitioner’s position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor’s degree, or its equivalent, in accounting.

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos001.htm.

² *Ibid.*

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or 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.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.³

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the American Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of “verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.” Up to two of the required years of work experience may be satisfied through college credit.⁴

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate’s degree in accounting,⁵ the AAO turns to the record for information regarding the nature of the petitioner’s business operations. While the size of a petitioner’s business is normally not a factor in determining the nature of a proffered position, both its level of income and its business operations are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an

³ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

⁴ Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several “Sources of Additional Information” at the end of its discussion of the occupation of accountants.

⁵ According to the website for Skyline College, a community college located in San Mateo, CA (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. Thus, an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

accountant. In cases where a petitioner's business is relatively small, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

At the time of filing, April 26, 2004, the petitioner identified itself as a newspaper, employing 22 employees and grossing \$1.9 million annually. While the AAO notes the director's concerns regarding what he found to be the petitioner's misrepresentation of staffing totals, it does not find the lesser employee totals noted by the director in the petitioner's July and August 2004 listings of its employees to be meaningful. Such fluctuations in the petitioner's staff appear to represent the normal ebb and flow in staffing experienced by most businesses. Accordingly, the AAO finds the evidence submitted by the petitioner, including its tax returns, to support its claims regarding the nature and size of its business. This evidence does not, however, demonstrate that the duties of the proffered position would impose a degree requirement on the beneficiary.

While the AAO agrees that the petitioner's media operations could create a potentially complex financial environment, it does not find the record to provide the evidence necessary to establish that this is the case. The financial information provided by the petitioner does not indicate that the beneficiary would be required to manage complex financial situations or relationships. Neither does the petitioner report outstanding business loans or other debt that would require servicing by the beneficiary, or indicate that it has complicated rental/lease agreements requiring financial attention. Further, although the AAO notes that the petitioner's tax returns indicate that a Philippines-based company holds a controlling interest in its business, the petitioner has not indicated what, if any, effect this business arrangement has on its accounting practices. Moreover, the petitioner, although it states it has "retail outlets" in 18 markets, offers no description of these outlets in terms of its operations or explains their impact on its financial operations, including whether they have distinct accounting systems that would be overseen by the beneficiary.

The AAO has taken particular note of the petitioner's statement that one of the beneficiary's primary duties would make him responsible for preparing operating and financial models, as well as business plans, for its expansion into other states and cities. It finds that the petitioner's expansion to other locations would significantly increase the complexity of the financial environment in which the beneficiary would be required to operate. However, the record contains no evidence to establish that the petitioner has plans to expand, e.g., business plans, contracts, correspondence, loan agreements or lease agreements related to expansion. Going on record without supporting documentation is not sufficient to meet 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)). As a result, the petitioner has not established that it has plans to expand its operations, nor that the beneficiary would perform the tasks related to this expansion.

Accordingly, the evidence of record does not demonstrate that the petitioner's financial operations are of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of accounting knowledge that may only be obtained through a baccalaureate degree in accountancy or a related field. The petitioner has not proved that the duties of the proffered position are those of a degreed accountant. Instead, they appear more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. Therefore, the proffered position may not be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel provides copies of eight Internet employment advertisements to prove that the duties of the proffered position are those of an accountant. While the AAO acknowledges that these announcements state that they are seeking accountants, not all seek accountants with baccalaureate degrees in a related field, as required for classification as a specialty occupation. They are further proof that not all accounting employment is performed by degreed accountants.

While five of the announcements indicate that the work to be performed would require a baccalaureate degree, only three stipulate a degree in a field related to accounting. Of the three remaining advertisements, one indicates that job candidates may apply based on experience, one provides no indication of its educational requirements and the third states only that it would prefer candidates with a baccalaureate degree (unspecified as to field) and accounting experience. Accordingly, the advertisements submitted by counsel do not establish the proffered position as that of a degreed accountant.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Although counsel submitted the eight Internet job advertisements already discussed to establish the proffered position as a specialty occupation under the first criterion, the AAO has considered whether they might, instead, demonstrate that the petitioner's degree requirement is the norm within its industry. However, none of the eight announcements are published by organizations similar to the petitioner, a newspaper. Instead, they represent employment opportunities in healthcare businesses, finance firms, a staffing organization and a manufacturing company. Therefore, they do not satisfy the criterion's first prong, which stipulates that a degree requirement be established in parallel positions among organizations similar to the petitioner.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence that would support such a finding. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion -- the employer normally requires a degree or its equivalent for the position -- the AAO usually 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, although the petitioner has not attempted to establish the proffered position as a specialty occupation based on its normal hiring practices, the AAO notes that the petitioner has previously employed the beneficiary in the proffered position as an H-1B worker. However, while the AAO acknowledges the petitioner's previous employment of a degreed individual in the proffered position, it does not find that employment to satisfy the third criterion. The petitioner has been in business since 1961 and submits no evidence of previously hiring a degreed accountant in the position.

To meet the criterion's requirements, a petitioner must not only establish that it normally imposes a degree requirement for a proffered position, but also that the duties of the position require the theoretical and practical application of a body of highly specialized knowledge obtained through a baccalaureate degree or its

equivalent. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Were CIS limited solely to reviewing a petitioner's self-imposed degree requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. In the instant case, the AAO has found the proffered position to reflect the work of a junior accountant, employment that does not require the beneficiary to hold the minimum of a baccalaureate degree. Accordingly, the petitioner's previous employment of the beneficiary in this position does not establish it as a specialty occupation under the third criterion.

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 these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds, however, no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have skills other than those of a junior accountant. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As previously noted, the AAO is aware that the petitioner has been employing the beneficiary as an H-1B worker in the proffered position, based on a previously approved petition. CIS' approval of the earlier petition does not, however, establish a basis for approving the instant Form I-129.

The record does not indicate whether the director reviewed the record on which the prior decision was reached. However, if that record contained no evidence beyond that found in the instant case, then CIS erred in approving the previously filed petition. CIS is not bound to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Further, each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Moreover, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a nonimmigrant petition on behalf of a previous beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248, F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.