

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

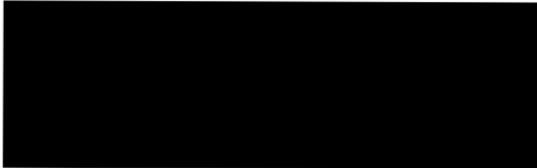
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

DI

PUBLIC COPY

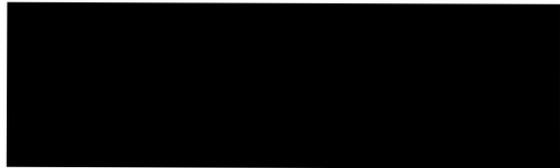


FILE: EAC 04 091 50722 Office: VERMONT SERVICE CENTER Date: **JAN '03 2007**

IN RE: Petitioner: 
Beneficiary: 

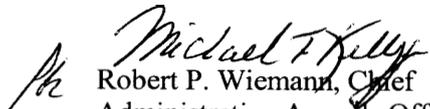
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 nonprofit fundraising and community development organization with fourteen employees that seeks to employ the beneficiary as a finance/facilities/operations coordinator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant a 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 basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. In denying the petition, the director likened the duties of the position to those of an office manager.

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

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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 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 proposed position.

According to the petitioner’s May 20, 2004 response to the director’s request for additional evidence, the beneficiary would spend twenty percent of her time handling divisional accounts payable and receivable to ensure that all records are accurate and kept in a timely manner; ten percent of her time assisting in the preparation of all contract reports, especially as they relate to providing financial reporting data, extracting data from the database, and the preparation of charts and forms; fifteen percent of her time monitoring the development of project budgets, which would include generating monthly budgets to actual reports; ten percent of her time preparing divisional monthly financial reports; six percent of her time reconciling divisional bank statements and all balance sheets on a monthly basis; five percent of her time coordinating the preparation and tracking of all invoices and assuring that all expenses have a corresponding invoice/receipt on file; ten percent of her time assuming responsibility for divisional employee payroll records and timesheets, as well as preparing and entering bi-weekly journal entries; ten percent of her time assuming responsibility for divisional employee records, including health and dental insurance, vacation, sick time, holiday, bereavement requests, 401(k) plans, and leave of absence documentation; four percent of her time acting as a coordinator for the petitioner’s computer network, including back-up of the main server on a weekly basis and maintaining the accounting database, and working with computer consultants when necessary; one percent of her time distributing all staff meeting agendas and minutes; two percent of her time implementing and approving changes in office procedures to assure excellence in efficiency and fiscal accountability; four percent of her time maintaining standard accounting/bookkeeping procedures, including the files necessary for annual independent audits and review of accounts; one percent of her time coordinating all internal and external communications, including incoming and outgoing e-mail correspondence, as well as requests for general information; one percent of her time performing other duties and financial analyses as required by the petitioner’s president; and one percent of her time maintaining up-to-date records and compiling relevant materials for updating the petitioner’s corporate profile and website.

On appeal, counsel contends that the director erred in denying the petition. Counsel asserts that the director’s characterization of the proposed position’s duties as similar to those of an office manager “represents a fundamental misunderstanding of the daily complexities of the position, requiring decision-making, supervisory work, and independent thinking so as to keep a diverse (both geographically and functionally) group of people ‘on track.’”

In determining whether a proposed position qualifies as a specialty occupation, 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.

The AAO notes that bookkeeping, accounting, and auditing clerks, who are not normally required to possess a degree in a specific field, perform many of the specific duties of the proposed position. According to the

petitioner's May 20, 2004 listing of the duties of the positions, the beneficiary would spend sixty-five percent of her time performing such duties. The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource upon which the AAO routinely relies for its information about the duties and educational requirements of particular occupations, states the following with regard to the duties of bookkeeping, accounting, and auditing clerks:

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 represent 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. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. . . .

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the 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. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. 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.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases . . . The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters, make phone calls to customers or clients, and interact with colleagues.

As noted previously, the beneficiary would spend sixty-five percent of her time performing the following duties: handling divisional accounts payable and receivable to ensure that all records are accurate and kept in

a timely manner; preparing divisional monthly financial reports; reconciling divisional bank statements and all balance sheets on a monthly basis; coordinating the preparation and tracking of all invoices and assuring that all expenses have a corresponding invoice/receipt on file; assuming responsibility for divisional employee payroll records and timesheets, as well as preparing and entering bi-weekly journal entries; assuming responsibility for divisional employee records, including health and dental insurance, vacation, sick time, holiday, bereavement requests, 401(k) plans, and leave of absence documentation; and maintaining standard accounting/bookkeeping procedures, including the files necessary for annual independent audits and review of accounts.

In that these tasks are similar to those performed by bookkeeping, accounting, and auditing clerks, and that such tasks would comprise the majority of the beneficiary's time, the AAO will look to the *Handbook's* discussion of the entry-level qualifications necessary for entry as a bookkeeping, accounting, and auditing clerk.

According to the *Handbook*, most bookkeeping, accounting, and auditing clerks are required to have the minimum of a high school degree. Although a two-year associate's degree in business or accounting may be required for some bookkeeping and accounting clerk positions, a four-year bachelor's degree is not required for entry-level employment. Accordingly, the majority of the beneficiary's time (sixty-five percent, according to the petitioner's description of the duties and percentage of time to be devoted to each task) would be spent performing duties that do not require a four-year degree.

The AAO finds no evidence in the record to demonstrate that the remaining thirty-five percent of the beneficiary's duties, which include generating monthly budget to actual reports, backing-up the petitioner's server on a weekly basis, distributing staff meeting agendas and minutes, and coordinating internal and external communications, require a baccalaureate degree, or its equivalent, in a specific specialty. Although counsel and the petitioner state that a degree is required, it does not appear that the degree must come from a specific field. Rather, it appears that a degree in a range of fields would suffice.

This conclusion is strengthened by counsel's statement on appeal that the duties of the proposed position are similar to those of [REDACTED] the petitioner's finance and operations manager. Counsel includes a copy of [REDACTED] college transcript and degree, which indicate that she earned a bachelor's degree in business administration.

As noted previously, 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 proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

Accordingly, the AAO finds that the proposed position does not qualify for classification as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job posting for an office assistant from [REDACTED] submitted by the petitioner in response to the director's request for additional evidence. However, this posting does not meet the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

First, the petitioner conceded in its response to the director's request for evidence that this is not a parallel position to the one proposed here; it stated that the advertised position was "less demanding" than the proposed position. Nor has the petitioner submitted any evidence to demonstrate that this job posting is from a company similar to the petitioner, a nonprofit fundraising and community development organization with fourteen employees. For example, there is no evidence that the advertiser is similar to the petitioner in size and scope of operations, business efforts, and expenditures. Simply 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)). Further, one job posting is not enough to establish an industry-wide standard. Therefore, this job posting is insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and it does not satisfy the requirements set forth at the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish the proposed position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding. As noted previously, the majority of the duties proposed for the beneficiary are similar to those of bookkeeping, accounting, and auditing clerks and do not require a bachelor's degree for their performance. The other duties proposed for this position do not require a bachelor's degree in a specific field. Rather, a degree in a range of fields would suffice.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Counsel concedes on appeal that this is a newly-created position, which precludes approval under this criterion. Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) cannot be satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 in the specialty occupation. The evidence of record does not establish such an association. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of individuals performing similar duties in other organizations. Again, the majority of the duties proposed for the beneficiary are similar to those of

bookkeeping, accounting, and auditing clerks and do not require a bachelor's degree for their performance. As discussed earlier, the record does not establish that the other duties proposed for this position require a bachelor's degree in a specific field. Further, the evidence of record does not demonstrate that any specific aspects of the proposed duties are so specialized and complex as to be usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Therefore, the proposed position does not qualify for classification as a specialty occupation, and the petition was properly denied.

On appeal, counsel cites several unpublished AAO decisions. However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions.¹ While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.

¹ In each of the four unpublished AAO decisions cited by counsel – WAC 98 202 50773, EAC 98 156 51264, EAC 96 010 52179, and SRC 98 195 50631 – the AAO found the proposed position to be a systems analyst. Such is not the case here; the AAO does not find that the duties proposed by the petitioner in this petition are analogous to those of a systems analyst.