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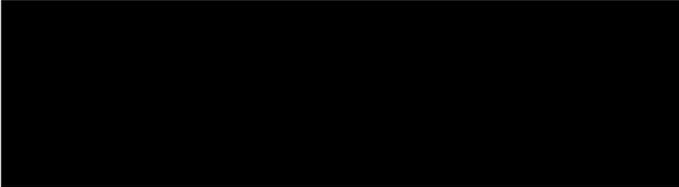
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: LIN 06 102 51924 Office: NEBRASKA SERVICE CENTER Date: **JUL 31 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.

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

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition. 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 nurse-staffing agency organized in the State of Illinois in 2005. It employs two personnel, has a projected 2006 gross annual income of \$1.2 million, and a projected 2006 net annual income of \$351,100. It seeks to employ the beneficiary as an accountant. Accordingly, the petitioner 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 determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the February 2, 2006 Form I-129 and supporting documentation; (2) the director's February 27, 2006 request for additional evidence (RFE); (3) counsel's March 13, 2006 response to the director's request; (4) the director's March 16, 2006 denial letter; and (5) the Form I-290B, with counsel's brief in support of the appeal. 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 (5<sup>th</sup> 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.

The petitioner seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes the petitioner's February 14, 2006 letter appended to the petition and an attachment to counsel's response to the director's RFE. As described in the petitioner's February 14, 2006 letter in support of the position, the duties of the proffered position would include:

1. Analyze financial information, prepare financial reports and determine financial status of the company;
2. Monitor financial activities of the company, ensuring that expenses stay within the set budget;
3. Oversee receivables, collectibles and payables;
4. Recommend measures to streamline cash flow;
5. Coordinate budget planning and preparation;
6. Analyze business procedures and policies to determine cost effectiveness;
7. Recommend measures to augment profitability;
8. Analyze financial information for taxation purposes;
9. Perform internal audit functions to ensure compliance with generally applied accounting principles.

The petitioner referenced the *Occupational Information Network O\*NET Online (O\*NET)* summary report for accountants and asserted that *O\*NET* indicated most accountant occupations required a four-year bachelor degree. The petitioner also referenced the Illinois Department of Employment Security (*IDES*) and noted that *IDES* listed accountants and auditors as among the jobs requiring a bachelor's degree.

In response to the director's RFE, counsel for the petitioner referenced the above-described tasks and asserted that the skills rise above the duties of a bookkeeper or clerk and require the individual performing the tasks to have a "bachelor's degree in accounting or related" to be sufficiently qualified to perform the duties. The petitioner also provided additional elements to each of the above-described tasks that have been reviewed as part of the record but will not be repeated here. Counsel acknowledged that the petitioner had only two employees and a projected gross annual income of 1.2 million dollars for the 2006 year, but contended that the size of the company is not relevant to the status of a specialty occupation. The record includes the petitioner's February 17, 2006 two-page "financial projection" listing the petitioner's assumptions regarding the homecare industry, three sentences regarding its marketing plan, and a reference to six homecare contracts that generate an income of over \$50,000 per month. The record also includes copies of two staffing contracts entered into between the petitioner and third parties.

On March 16, 2006, the director denied the petition, determining that the majority of the described duties of the proffered position were the duties of a bookkeeper and that although the beneficiary would also be responsible for financial reporting, the petitioner had not demonstrated that the level, scope, and complexity of the proposed duties is commensurate with baccalaureate level training in a specific specialty. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation, as the job duties specifically require preparing, analyzing, and verifying financial documents over the less specialized function of recordkeeping. Counsel asserts that the position is an accounting position and references an unpublished decision approving an accounting position with comparable duties. Counsel also takes issue with the director's characterization of the duties of the position and asserts that the director ignored the analytical skills, production of financial analysis, and projection reports described as required by the position and improperly focused on the size of the petitioner's business. Counsel attaches copies of 15 Internal Revenue Service (IRS) Forms 1099, Miscellaneous Income, it issued in 2005 as evidence that it is an active, on-going staffing agency. Counsel also submits several job advertisements for the positions of staff or senior accountant, some of which required the successful applicant to have a bachelor's degree in accounting.

To make its determination as to whether the employment described in the record 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) which require that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, or that 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)).

The AAO first 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.<sup>1</sup>

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and acknowledges that the petitioner would desire the beneficiary to have an understanding of some basic accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties wherein some accounting knowledge is necessary does not establish the proffered position as that of an accountant. 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.

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.

The *Handbook* 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

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.<sup>2</sup>

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation 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.<sup>3</sup>

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, 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 level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient 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, the petitioner indicated it was established in 2005, employed two individuals, provided staffing services, and had a projected gross annual income of 1.2 million dollars, and a projected net annual income of \$351,100. The petitioner subsequently provided a two-page financial projection, copies of two staffing contracts, and copies of fifteen IRS Forms 1099 issued to contract staff. The AAO acknowledges that the petitioner may expand by entering into additional staffing contracts, hiring additional employees and contract workers, and adding to its geographical territory and could potentially establish the financial and operational complexities that would require the duties of the proffered position to be performed by a degreed accountant. However, upon review of the current record, the AAO does not find documentary evidence sufficient to determine that the accounting employment described by the petitioner would impose a degree requirement on the beneficiary. The record does not contain sufficient documentation related to its financial operations or organization that would shed light on the complexity of the accounting work to be performed by the beneficiary, e.g., tax returns or other financial documents or reports that evidence the complexity of the petitioner's financial operations. The record does not contain documented evidence of the petitioner's intentions for expansion such as tax returns showing complex debt repayment schedules, loan applications, correspondence, or a business plan substantiated by documentary evidence. The AAO notes that the

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<sup>2</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

<sup>3</sup> 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.

petitioner has employed 15 contract staff and has two staffing contracts, and claims to have an additional four contracts, however, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's ongoing staffing business are sufficiently complex to require the services of a degreed accountant. 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)). The petitioner has not provided documentary evidence establishing that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require that the proffered position requires a degree in accounting.

The duties of the proffered position are not established as the duties of a degreed accountant. Instead, they appear at most to be 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. The evidence submitted by the petitioner is insufficient to establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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. In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

To establish its degree requirement as the norm within its industry under the first prong of the criterion, the petitioner, on appeal, submits several job advertisements for staff accountants. None, however, satisfy the requirements for establishing an industry standard. Of the advertisements submitted, none of the organizations appear similar to the petitioner, a company operating a staffing agency. Instead, the organizations publishing the advertisements are from a Catholic health system, a hospital, a jeweler, a convenient store chain, and a real estate loan servicing company. The advertisements do not provide sufficient information to enable the AAO to conclude that the businesses advertising the positions are similar to the petitioner in size, number of employees, or level of business. Neither do the advertisements provide meaningful descriptions of the positions advertised or list duties like those required by the petitioner. As observed above, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate financial principles, but rather has described the routine tasks of a junior accountant who is not required to have a four-year degree in a specific discipline. Therefore, the proffered position may not be established as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion which requires that the employer demonstrate that it 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 matter, the petitioner is a newly organized company

and does not have a history of hiring degreed accountants. In addition, the AAO observes that although the petitioner claims to require the services of a degreed accountant, the record contains an evaluation of the beneficiary's foreign credentials that concludes the beneficiary's foreign education is equivalent to a bachelor's of science degree with a major in business administration. The evaluation does not indicate the beneficiary foreign education concentrated in the area of accounting. Thus, the record suggests that the petitioner in this matter does not require that the incumbent in the proffered position have attained a four-year degree in accounting or a specific discipline relating to accounting. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant. The evidence of record fails to establish that the proffered position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO acknowledges counsel's reference to an unpublished decision in which the AAO determined that the position described required the services of a degreed accountant, a specialty occupation. However, counsel has not furnished evidence establishing that the facts of the instant petition, including the nature of the petitioner's business, are analogous to those in the unpublished decision. Moreover, 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.

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.