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FILE: WAC 07 140 52199 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 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 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*  
  
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 an importer and distributor of men's clothing and seeks to employ the beneficiary as an internal auditor. The petitioner, therefore, endeavors to employ the beneficiary as 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 his determination that the petitioner had failed to establish that there exists a reasonable and credible offer of employment.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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.

To determine whether a particular position qualifies as a specialty occupation, CIS does not simply rely on the position’s title. The specific duties of the proposed 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 proposed 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.

As noted previously, the petitioner is a distributor of men’s clothing. It was established in 1999 and has four employees and four subcontractors, and stated gross annual income of \$2.8 million and a net annual income of \$75,000. It proposes to employ the beneficiary as an internal auditor. According to its March 28, 2007 letter, the petitioner outlined the duties of the proposed position as follows:

- 1) **Plan and conduct audits**  
[The beneficiary] will develop audit objectives based on standards [sic] audit principles, which will include systematic audit engagements for operational and financial audits. She will perform internal control evaluation, systems analysis, and assess operations.
- 2) **Financial Analysis**  
The job will involve examination of the company’s financial records and accounting systems to determine accuracy, proper recording of financial transactions, and ensure compliance with established standards. [The beneficiary] will perform financial analysis to assess the company’s operating and financial performance.
- 3) **Verification of financial transactions**  
[The beneficiary] will analyze data entered in the books of original entry, and check journal and ledger entries. She will also check financial records for accuracy, including cash and check payments, import transactions, inventory, delivery receipts, disbursements and collection. She will also determine the company’s cash position and financial performance.

4) **Perform variance analysis & determine tax liabilities**

The position will also require [the beneficiary] to analyze financial reports to determine tax liabilities. He [sic] will perform variance analysis. In line with this task, she will closely evaluate the company's materials assets, income, surplus, liabilities and expenditures to determine any weakness and identify potential tax issues. If any variance is detected, she will ascertain how the variance occurred, its possible tax implications, and how to avoid errors in the future.

5) **Analysis of procedures, systems analysis, and internal control**

Part of the job will also involve analysis of data processing, information systems, and management procedures. She will be responsible for ensuring adequate control measures are in place [sic], and being followed. Additionally, [the beneficiary] will assess daily work flow to determine possible duplication of work, and possible source of waste, or mismanagement.

6) **Write audit reports and recommendations**

[The beneficiary] will be responsible for writing audit reports to document findings. She will provide recommendations to correct any deficiencies noted, weakness, or lack of compliance.

7) **Develop internal control measures**

The most significant aspect of the job is to develop internal control measures to promote operational efficiency, safeguard company assets, and prevent fraud. In the same manner, [the beneficiary] will implement quality improvement techniques and will install systems to improve operational efficiency.

The petitioner also submitted the job posting for the position of internal auditor that stated that the position required a "Bachelor's degree in Accounting."

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel for the petitioner states that "the USCIS did not dispute that a baccalaureate degree requirement is common for internal auditors or that the proffered duties and responsibilities met the complexity or scope of responsibility normally required of an Internal Auditor. The USCIS based its denial wholly on its conclusion that this employment offer was not consistent with the needs of the petitioner, claiming that the petition is not large or complex enough to require the services of an Internal Auditor." The AAO disagrees with counsel's statement regarding the director's denial letter. Although the director stated that the denial was based on the fact that the position's offer of employment was not authentic, the director discussed the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and determined that the petitioner did not establish that the proposed position qualifies for classification as a specialty occupation. The AAO notes that the director erroneously stated that the proffered position was for a full-time position. The AAO withdraws this part of the decision since the proposed position is for a part-time Internal Auditor position.

On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner noted that the petitioner is a company "with more than \$2

million annual income, \$1 million total assets, and hundreds of transactions within each quarters,” and based on its “complex financial transactions and fiscal responsibilities,” it is responsible for the petition to employ a part-time internal auditor, in addition to an accountant.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The AAO agrees with the director’s finding that the proposed position does not qualify for classification as a specialty occupation.

The petitioner has stated that its proposed position is that of an internal auditor. To determine whether the duties of the proposed position support the petitioner’s characterization of its employment, the AAO turns to the 2007-2008 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*, internal auditors:

*Internal auditors* verify the effectiveness of their organization’s internal controls and check for mismanagement, waste, or fraud. They examine and evaluate their firms’ financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and government regulations. Because computer systems commonly automate transactions and make information readily available, internal auditors may also help management evaluate the effectiveness of their controls based on real-time data, rather than personal observation. They may recommend and review controls for their organization’s computer systems, to ensure their reliability and integrity of the data.

The AAO finds the above discussion generally reflective of the petitioner’s description of the duties of the proposed position and agrees that the petitioner’s employment would require the beneficiary to have an understanding of basic 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 proposed position would impose a degree requirement on the beneficiary. Thus, the question is not whether the proposed position requires a 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 and auditors clearly indicates that auditor positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Some 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 accountant positions by demonstrating their accounting skills on the job.

Most beginning accountants and auditors may work under supervision or closely with an experienced accountant or auditor before gaining more independence and responsibility.

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.

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>1</sup>

To determine whether the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate’s degree in accounting,<sup>2</sup> the AAO turns to the record for information regarding the nature of the petitioner’s business operations. 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 auditing position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

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<sup>1</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.

<sup>2</sup>According to the website of Skyline College, a community college located in San Mateo, California (<http://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.

As noted previously, the petitioner employs four individuals and four subcontractors, and it is engaged in the distribution of men's clothing. As noted by counsel on appeal, though the size of the company does not, in and of itself, determine a company's need for an internal auditor, its income level and scale of operations have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an internal auditor. The 2005 tax return indicates gross receipts of \$2,131,092 and net taxable income of \$555,757. The responsibilities associated with a company that distributes clothing differ considerably from the responsibilities associated with larger companies, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will employ the beneficiary in an auditing position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. The petitioner has not demonstrated that its business, despite its relatively limited size, has the complexity of financial operations to require a degree in accounting.

Moreover, the record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as unique accounting systems or financial requirements that would add complexity to the beneficiary's duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex financial agreements or other issues that might complicate its financial situation.

Accordingly, the duties of the proposed position are not established as those of a degreed auditor. As a result, the petitioner has not established the proposed position 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. 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. Counsel did not submit any documentation to establish this criterion even after the director requested such documentation in its request for evidence. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, the nature of the duties of the proposed position as set forth in this petition does not support such a finding. There has been no demonstration that the proposed position is more complex or unique than the general range of duties of non-degreed internal auditors in other, similar organizations, which would not normally require a degreed individual. The *Handbook's* discussion of the occupation of accountants and auditors clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions requiring less than a baccalaureate degree. In addition, the director noted that the company has an accountant and an accounting clerk and is now trying to fill the position of an internal

auditor. The director was unclear as to why a smaller company would require three employees in the accounting department. On appeal, counsel submitted the job duties of both the accountant and the internal auditor to differentiate the duties required of each position. However, in reviewing the job duties, it appears that the accountant and the internal auditor will overlap in several duties such as examining financial records and accounting systems, identifying tax issues and preparing financial reports. The petitioner has not established an organizational complexity that would require so many positions to be filled in the accounting department. 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)).

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally 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.

The petitioner indicated that the current accountant has a bachelor's degree or its equivalent. However, the record of proceedings does not establish that the two positions are interchangeable. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As noted previously, the petitioner has not demonstrated a unique accounting system, established complex financial obligations or agreements, or otherwise established that the complexity of its financial operations require a person with a four-year degree in accounting.

As a result, the 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).

Accordingly, the petitioner has failed to establish that the proposed position qualifies 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), and the petition was properly denied.

Beyond the decision of the director, the AAO finds that the petition may not be approved for an additional reason, as the record does not establish that the beneficiary qualifies to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so she does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Although the petitioner states that it submitted a credential evaluation on behalf of the beneficiary, the file does not contain such document. The file contains the beneficiary's bachelor's degree from St. Paul College of Manila, Philippines, and a certification from the Philippines stating that the beneficiary is a certified public accountant. However, the petitioner did not submit a credential evaluation.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform the duties of a specialty occupation. 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.