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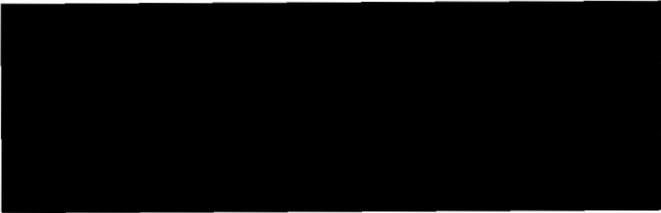
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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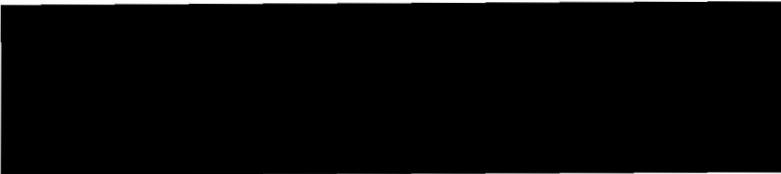


FILE: WAC 06 198 52034 Office: CALIFORNIA SERVICE CENTER Date: **MAY 02 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

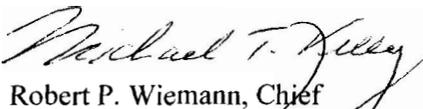
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

for 
Robert P. Wiemann, Chief
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 Dunkin Donuts franchise. It seeks to employ 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. 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 with supporting documentation, and the petitioner’s response to the director’s request for evidence. In response to the director’s request for evidence, the petitioner described the beneficiary’s duties as follows:

The Accountant processes the daily Accounts Payable by using QuickBooks (Accounting Software) and ensures the timely and proper remittance of invoices/payables to vendors. The Accountant also input[s] the monthly sales, and weekly payroll and payroll taxes to QuickBooks for consolidation of data for financial statements. She prepares consolidated balance sheet[s] to reflect [the] company’s asset[s], liabilities and capital, prepares profit and loss statements for specified accounting period[s] and present[s] financial statements and related disclosures in accordance with generally accepted accounting principles to provide accurate and useful information to management (President) for review and decision making.

A list of the beneficiary’s duties was also attached to the petitioner’s support letter dated May 29, 2006.

In determining whether the proffered position 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 determined that the petitioner had failed to establish that a credible offer of employment in a specialty occupation existed. The director also found that the petitioner’s payroll records

failed to establish that the petitioner paid the beneficiary the wage indicated by it on the Form I-129, which called into question the truthfulness of other statements made in support of the petition.

The first issue to be discussed is the director's conclusion concerning the petitioner's payroll records. The director noted that the payroll records submitted into the record did not establish that the petitioner paid the beneficiary the wage reported by the petitioner on the Form I-129. On appeal, the petitioner submitted a statement from the petitioner's Certified Public Accountant (CPA) which indicates that the wage reports submitted for the beneficiary were incorrect and had been submitted in error. Corrections were made in the petitioner's accounting system to rectify those errors, and amended wage filings were submitted to taxing authorities. The CPA submitted documentation to establish that the petitioner had paid the beneficiary the wage that she was entitled to as reported on the Form I-129. The documentation submitted overcomes the director's concerns, and the director's decision regarding this issue is withdrawn.

The remaining issue to be considered is whether the proffered position qualifies as a specialty occupation. As discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary in a position requiring a degreed accountant.

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 *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*, 2008–09 Edition, 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.

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 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 or a related specialty.

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:

Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. Demand for full-charge bookkeepers is expected to increase, for example, because they do much of the work of accountants and perform a wider variety of financial transactions, from payroll to billing. Technological advances will continue to change the way these workers perform their daily tasks, such as using computer software programs to maintain records, but will not decrease the demand for these workers, especially in smaller establishments.

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.¹

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,² 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 the extent of its business operations are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an 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. The petitioner states that its operation serves more than 1350 customers per day, and submitted numerous

¹ 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.

²According 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.

copies of invoices to demonstrate the volume of transactions required of the beneficiary in processing its accounts payable. Virtually all receivables are in the form of cash received through the sales of the petitioner's products. The record does not further demonstrate the nature and extent of the petitioner's financial operations, except that a copy of its 2003 corporate income tax return is included. There is nothing in the record to establish that the beneficiary is required to perform complex financial analysis of the petitioner's business operations for information to be used by management in making business decisions. The beneficiary is required to process high volumes of product and service invoices, and, as stated by the petitioner, prepare financial statements (i.e., profit and loss statements, balance sheets, etc.), which are commonly prepared by non-degreed accounting personnel. The duties of the proffered position have not been established as sufficiently complex to indicate that the petitioner would employ the beneficiary as a management accountant. Instead, as listed, 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 petitioner has not established the proffered position 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.

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 the first prong of the criterion, that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternatively, the second prong, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner offers no evidence in support of the first prong of the criterion, and has, therefore, failed to establish it. 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. The duties of the proffered position are presented by the petitioner in very general terms which do not permit a detailed analysis of the actual duties the beneficiary would perform in the petitioner's business environment. As previously noted, the petitioner did not provide evidence of the financial data or records that the beneficiary would analyze (with the exception of product invoices) and work with so that a determination could be made of the degree of complexity involved in analyzing/working with those records. It is not possible to conclude, from the generalized description of the duties provided by the petitioner that the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. The duties detailed by the petitioner are routinely performed by junior or associate accountants who do not possess a baccalaureate level education, and by bookkeepers and associated management/accounting personnel. 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, the petitioner has submitted no evidence regarding its hiring practices. Accordingly, the record does not establish the proffered position as a specialty requirement under the third criterion. 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. As previously discussed, the AAO finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants, bookkeepers or other non-degreed accounting personnel. The extent to which the duties of the proffered position are described in the record is generalized and generic and, as such, does not reveal a level of specialization and complexity usually associated with at least a bachelor's degree in accounting or a related specialty. 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 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).

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.