

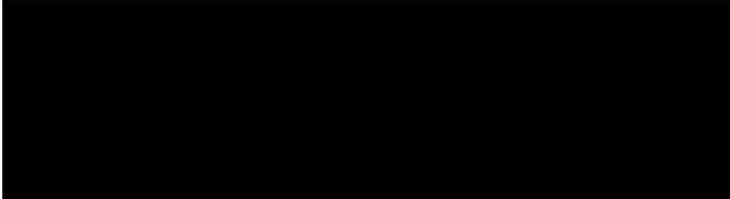
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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
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U.S. Citizenship
and Immigration
Services

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FILE: EAC 03 231 54618 Office: VERMONT SERVICE CENTER Date: 11/14/07

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 of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a tuxedo shop. It seeks to employ the beneficiary as an accountant and to classify her 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 on the ground that the record did not establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 proffered position.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a tuxedo shop with three employees and \$260,000 in gross annual income that proposed to hire the beneficiary as a part-time accountant working 20-25 hours/week. In letters accompanying the petition and in response to the RFE, the petitioner described the duties of the proffered position, and the percentage of time required by each, as follows:

- compiling and analyzing financial information as part of franchisee's executive team (New England area franchise owners and accounts) – 15%
- preparing financial reports to determine and maintain record of assets, liabilities, profits and losses, and tax liability – 15%
- documenting business transactions – 5%
- maintaining client records – 5%
- auditing contracts with suppliers, leasers, and insurers – 10%
- auditing orders, invoices, and vouchers – 10%
- ensuring all accounting and bookkeeping duties are completed – 15%
- assisting owner in strategic planning for large events such as bridal showers, weddings, seasonal promotions, and other franchise-initiated promotional events – 15%
- other accounting work – 10%

According to the petitioner the proffered position requires at least a bachelor's degree in accounting, economics, or a related field. The record indicates that the beneficiary graduated from Santa Maria University, in Venezuela, with an economics degree in December 1996. The petitioner indicated that the company had previously hired an outside accountant to perform the functions of reconciling bank statements, balancing the ledger and bank statements, completing quarterly trial balances and income statements, auditing and itemizing products and costs, filing quarterly state and federal tax reports, and filing annual business and personal tax returns. According to the petitioner, the beneficiary would take over all of the above duties except the annual tax returns. The petitioner also submitted a letter from the outside accountant confirming his work for the petitioner as well as a professional evaluation of the proffered position and the beneficiary's credentials from a university professor.

Based on the evidence of record, the director found that the proffered position was closer to that of a bookkeeper/administrative secretary than that of an accountant. The director was not persuaded that the job duties were so complex or unique that they required a bachelor's degree in a specialized field of study. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal the petitioner asserts that the duties of the proffered position accord with the description of accountants in the *Handbook*, as well as in two other DOL resources, the *Dictionary of Occupational Titles (DOT)* and the Online Wage Library, and do not accord with the descriptions of bookkeepers or administrative secretaries in those resources. The petitioner contends that the director ignored much of the evidence it had previously submitted, including the aforementioned evaluation of the position by a university professor, the letter from the petitioner's outside accountant, and the excerpts from the DOL occupational resources cited above, which establish that the proffered position is a specialty occupation.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Most accounting positions, as indicated in the *Handbook*, require a bachelor's degree in accounting or a related field. *See id.* at 70. Accountants, therefore, qualify as a specialty occupation under the Act. By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

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 have 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 . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

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.

Handbook, id., at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.*

Based on the evidence of record, the AAO determines that the petitioner has failed to establish that the beneficiary would perform the services of an accountant in the proffered position. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The letter submitted by the petitioner's outside accountant, Steward A. Don, simply listed "the services my company provides," which included (1) payroll services – weekly, monthly, quarterly, and year-end, (2) bookkeeping services – weekly, monthly, quarterly, and year-end, (3) sales tax – monthly, (4) workman's compensation, (5) audits – quarterly and year-end, (6) corporate tax returns – year-end, and (7) all other projects as needed. The letter provides no further details about the services specifically provided to the petitioner, such as their level of complexity and the amount of time they required. Based on the limited information in the list, most or all of the duties could be performed by a bookkeeping, accounting, or auditing clerk. One item on the list – the filing of tax returns – is not part of the proffered position's duties. As for the evaluation of the proffered position and the beneficiary's qualifications submitted by

Assistant Professor of Finance at the Hofstra University School of Business in Hempstead, New York, the evaluator simply recited the duties of the position as listed by the petitioner and declared that an accountant requires a degree in accounting, finance, economics, or a related field, without demonstrating that he had any first-hand knowledge of the tuxedo shop, its particular business operation, or its need for the services of an accountant. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). Neither the letter from Mr. Don nor the

professional evaluation from Dr. Spieler is persuasive evidence that the beneficiary would be performing accountant-level services in the proffered position.

The AAO determines that the duties of the proffered position accord with the duties of bookkeeping, accounting, and auditing clerks, as described in the *Handbook*, as well as with the duties of a bookkeeper as described in an excerpt from the *DOT* quoted by the petitioner in the appeal. The AAO agrees with the director that the duties of the position as described in the petitioner's various submissions are not so complicated or specialized that they could not be performed by an experienced bookkeeping, accounting, or auditing clerk. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into such a position. The proffered position, therefore, does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has not submitted any evidence that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As far as the record shows, the duties of the position at issue in this case do not exceed those normally encountered in the occupational field of bookkeeping, accounting, and auditing clerks, which do not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.