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U.S. Citizenship  
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Services

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FILE: WAC 04 053 50205 Office: CALIFORNIA SERVICE CENTER Date: APR 21 2005

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:  
[Redacted]

**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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center 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 property management and investment company that seeks to employ the beneficiary as an accountant. 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 because the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: analyze and compile financial information to prepare entries to accounts, such as general ledger accounts documenting business transactions; prepare balance sheets, profit and loss statements and other reports to summarize current and projected company financial position; prepare tax returns; examine accounts and records and compute taxes according to prescribed rates, laws, and regulations; see that periodic tax payments and required reporting are done in a timely manner; analyze past and present financial operations, trends and costs, estimated and realized revenues to prepare budgets and project future revenues and expenses; interpret budgets to management as well as advise management on matters such as the effective use of resources and assumptions underlying budget forecasts; audit contracts, orders, vouchers, and prepare reports to substantiate individual transactions; establish an accounting system; and modify and document implementation of accounting control procedures. The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . .

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. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete . . . .

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory . . . .

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The majority of the duties of the proffered position appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, the petitioner states that the beneficiary will: analyze information to prepare entries to accounts; prepare balance sheets, profit and loss statements, and other financial reports to summarize the company's financial position; prepare tax returns and make periodic tax payments; prepare budgets; audit contracts, orders, and vouchers; and maintain the company's accounting system. The beneficiary will report to the company's controller. Bookkeepers, accounting and financial clerks routinely assist in budget preparation and maintain accounting control systems. On a daily basis they: make entries to accounts; prepare balance sheets, profit and loss statements, and other financial reports; and audit contracts, orders, and vouchers. On the other hand, and according to the *Handbook*, management accountants record and analyze financial information of the companies for which they work. Their responsibilities include budgeting, performance evaluation, cost and asset management. They are also usually part of executive teams involved in strategic planning or new-product development. The duties of the proffered position, as described, do not appear to be of the complexity or strategic importance of those described for management accountants. The *Handbook* notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for the performance of these duties. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the proffered position and offers no evidence in this regard. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3).

Finally, the duties of the proffered position appear to be routine for bookkeeper, accounting/financial clerks. As described, they do not appear to be so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor do they appear to be so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a

specific specialty. The duties are performed on a regular basis by individuals with less than a baccalaureate level education in a specific specialty. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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