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U.S. Citizenship  
and Immigration  
Services



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FILE: WAC 03 185 51341 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2005

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.

Robert P. Wiemann, Director  
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 owns and operates strip malls. It seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. 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; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail setting up and implementing accounting procedures; analyzing financial information and preparing financial reports to determine assets, liabilities, profit and loss, and tax liability; handling accounts payable and receivable, bank reconciliation, budgeting, and monthly financial statements. The petitioner stated that the beneficiary is qualified for the position based on his background. The record contains certificates indicating that the beneficiary possesses a bachelor's degree in commerce and holds registration as an industrial accountant in Saskatchewan, Canada.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director determined that nearly half of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, jobs that do not require a bachelor's degree.

On appeal, counsel states that the proffered position is a specialty occupation. Citing to *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel states that in the case the court held that the size of the petitioning company, the salary offered, and company's history of maintaining the position are irrelevant in determining whether the proffered position is professional. Counsel maintains that setting up accounting procedures will be one of the position's main duties, and that the *Handbook* does not describe a bookkeeper as performing this duty. Pointing to the contract with Philip Morris USA, counsel states that a qualified accountant must analyze sales and calculate percentages sold, and that the contract allows Philip Morris USA to perform audits and inspections of the petitioner's books, records, documentation, and inventory. Counsel contends that financial clerks do not have the specialized skill and knowledge to analyze and evaluate costs, assets, or interpret financial information to ensure successful negotiations with retail lenders. Counsel states that the *Handbook* shows this entails cost accounting, financial budgeting, and planning which are duties performed by management accountants. Counsel states that the percentage of time the beneficiary spends performing the position's duties will change based on the petitioner's investments in commercial properties. Counsel contends that the petitioner's detailed job description, submitted in response to the request for evidence, establish that the beneficiary's duties are performed by accountants. Finally, counsel submits job postings.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 often considered by CIS when determining these criteria include: whether the

Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and 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 attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The more expansive job duties described by counsel in the appeal letter and in his July 17, 2003 letter are not persuasive in establishing that the proffered position is a specialty occupation given that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the AAO will not consider the job duties described by counsel that are inconsistent with those in the petitioner's April 4, 2003 letter. For example, counsel's assertion that the beneficiary will "make financial arrangements for bank loans" and will "obtain construction financing" is inconsistent with the petitioner's letter.

The AAO routinely refers to the *Handbook* when determining the educational requirements for certain occupations. The petitioner stated that the beneficiary will prepare financial reports to determine assets, liabilities, profit and loss, and tax liability; handle accounts payable and receivable, bank reconciliation, and monthly financial statements. As shown by the *Handbook*, bookkeeping, accounting, auditing, and financial clerks perform these duties. The *Handbook* reports:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

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

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.

Counsel's claim that bookkeepers do not set up accounting procedures does not prevail in establishing that the proffered position is a specialty occupation. The petitioner provided no specificity about this duty such as what it entails and how much time will be devoted to setting up accounting procedures. Likewise, no detail is provided by the petitioner about "budgeting" and "analyzing financial information."

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. Thus, the director correctly concluded that the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position given that the proffered position's duties are performed by financial clerks.

On appeal, counsel refers to the evidence submitted in response to the request for evidence to substantiate that the proffered position's duties would be performed by an accountant. None of this evidence is persuasive. The petitioner's contract with Philip Morris USA does not involve accounting duties that rise above those performed by financial clerks. The contract is for the sale of one item, cigarettes, and it stated that the petitioner would receive a set rate, such as 30 cents, per carton sold. The contract does state that Philip [REDACTED] is authorized to audit and inspect the petitioner's records and books, though only cigarette sales would be involved in the audit. The contract with PetroNet is for the purchase of motor fuel; it stated that PetroNet sets the fuel price. Given the simplicity of the accounting duties associated with the two contracts, neither contract would require the services of an accountant. Similarly, the terms of the property lease agreements do not indicate the beneficiary will perform the duties of an accountant. Rather, the agreements show the beneficiary will perform simple accounting calculations to determine monthly rental income. The agreement with [REDACTED] for instance, indicated that the tenant's base rent is set at 8 percent of net monthly sales. Clearly, an accountant would not be required to perform this simple calculation.

Based on the petitioner's job description, its business would not require the services of an accountant as described in the *Handbook*. Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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.

Very few of the duties described in the *Handbook* apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in performance evaluation. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

The job postings do not establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. None of the organizations are similar in nature to the petitioning entity, an owner and operator of strip malls. The City of Springfield, the University of New Mexico, the Municipal Research & Services Center of Washington, and the Texas Department of Criminal Justice are all public entities; they are obviously dissimilar from the petitioning entity. Consequently, the petitioner cannot establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record that would demonstrate the position is so complex or unique that it can be performed only by an individual with a degree. Again, the beneficiary's duties are performed by financial clerks, jobs that do not require a baccalaureate degree. Consequently, the petitioner cannot demonstrate that the position is so complex or unique that it can be performed only by an individual with a degree.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, the duties of the proffered position are performed by financial clerks as described in the *Handbook*. As such, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is 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.