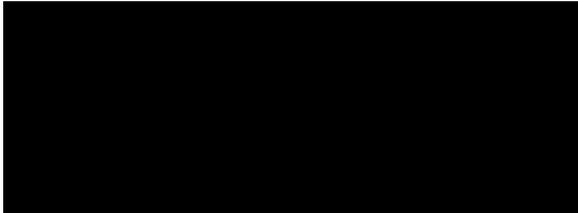


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U.S. Citizenship  
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*D,*

FILE: WAC 02 273 52755 Office: CALIFORNIA SERVICE CENTER Date: JUL 19 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:



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 Michael T. Kelly*  
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 provides custom-made sheet metal. It seeks to employ the beneficiary as a part-time 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 previously submitted 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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 preparing the quarterly and annual tax records, payroll statements and deductions, monthly expense reports, and financial statements; directing the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments, and general ledgers; preparing balance sheets reflecting the company's assets, liabilities, and capital; performing audits and preparing reports; and updating and maintaining account receivables. The petitioner indicated that the beneficiary's education and work experience qualify her for the proposed position.

The director found that the proposed position is not at the level of an accountant. The director determined that although some of the beneficiary's duties reflect those of an accountant, the majority are payroll and financial transactions which are similar to those of a bookkeeper or accounting clerk as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* reveals that the occupations of bookkeeping and accounting clerks do not require a bachelor's degree. According to the director, the size and scope of the petitioner's business diminishes the claim that the proposed position has the complexity and sophistication resembling that of an accountant. The director decided that no evidence shows that the proposed position has the complexity or advanced accounting or auditing duties, such as the preparation of detailed financial reports for outside agencies or corporate shareholders, or that the position requires a person with knowledge of sophisticated accounting techniques that are normally associated with the duties of a corporate accountant.

On appeal, counsel states that the duties of the proffered position are those of an accountant as that occupation is described in the *Handbook* and the *Occupational Information Network (O\*Net)*. Counsel distinguishes the proffered position from that of a bookkeeper and accounting clerk, and maintains that a bookkeeper does not possess the expertise to design and install accounting systems; forecast, analyze, and prepare reports to apprise management of the company's current and projected revenues; or have specialized knowledge that is required to prepare tax returns or advise management of tax strategies. Counsel states that a bookkeeper normally will not prepare reports for non-management groups. An accounting clerk's duties, counsel states, are primarily clerical in nature such as performing financial transactions that relate to charges, refunds, invoices, or bank statements. Counsel states that the duties of a bookkeeper and accounting clerk are primarily clerical in nature, whereas an accountant must analyze financial documents, understand accounting principles, project revenue, and advise on tax strategies or business transactions. Counsel states that the beneficiary's bookkeeping duties are incidental to her accountant responsibilities; that the *O\*Net* reveals that this overlap in duties is common; and that in *Perez vs. Ashcroft*, 236 F. Supp. 2d 899, 904 (N.D. Ill. 2002) the court recognizes that even if a beneficiary engages in a small amount of administrative duties, the beneficiary still qualifies as a religious worker. Counsel contends that the director did not request detailed information about the petitioner's size, income, and scope; thus, it is unfair for the director to base the denial on data that he does not have. Citing to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel

states that the court held that the size of a petitioner's operation bears no rational relationship to the need for a professional, and that the director should not evaluate the needs of a business. Counsel also refers to a prior Eastern Service Center decision to show that a petitioner's size, scope, and newness are not dispositive in determining whether a position is a specialty occupation. According to counsel, the petitioner's growth and desire to improve its business planning necessitates the services of a part-time accountant to plan for budget and income fluctuation, and help the petitioner remain competitive. Counsel explains the role of an accountant in preparing a balance sheet.

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 now 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 is the normal minimum requirement for entry into the particular position; 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 often considered by CIS when determining these criteria include: whether 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

Counsel states that the duties of the proffered position are performed by an accountant as described in the *Handbook* and the *O\*Net*. Counsel's reference to and assertions about the relevance of information from the *O\*Net* is not persuasive. A Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. Such a classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest field to the proffered position is the management accountant. The *Handbook* indicates:

*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.

Many of the duties described in the *Handbook* do not 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, cost management, or asset management. 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 submitted job postings are insufficient to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The companies in four of the postings are dissimilar in nature, size, and scope to the petitioner, a small provider of custom-made sheet metal. The Century Group is a real estate organization; Toshiba American Medical Systems, Inc. is a medical diagnostic imaging system company; Spherion represents a fortune 100 company; and The Farmers Insurance Group of Companies is in the insurance industry. The posting does not indicate the nature of TAC Worldwide Companies. For these reasons, the job postings do not establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) .

The submitted evidence is insufficient to demonstrate that the particular position is so complex or unique that it can be performed only by an individual with a degree. As we have discussed in this decision, the evidence reveals that the proposed position does not rise to the level of an accountant.

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).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

Counsel cites to *Young China Daily* to assert that the size of an operation bears no rational relationship to the need for a professional, and further asserts that since the director did not request detailed information about the petitioner's size, income, and scope it is unfair for him to base the denial on data that he does not possess.

These assertions are not persuasive. The director did not base his denial on the size and scope of the petitioner's business operation; he took these factors into consideration, along with other evidence, in determining whether the proposed position had the complexity and sophistication resembling that of an accountant. Furthermore, the director did have information about the petitioner's income and size; it was indicated by the petitioner on the Form I-129 petition. We note that on appeal the petitioner had an opportunity to elaborate on these areas. Also, Section 291 of the Act, 8 U.S.C. § 1361, indicates that the petitioner bears the burden of proving eligibility for the benefit sought.

Given the context of the petitioner's business, which is a company that provides custom-made sheet metal, earns a gross annual income of \$750,000, and employs eight persons, it is very unlikely that the petitioner would require the services of a part-time accountant. The level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of only \$750,000 differs significantly from responsibility associated with a far larger income or for a firm that is responsible for the financial work of many clients. Thus, given the context of the petitioner's business, and the AAO's finding that the proffered position does not rise to the level an accountant, the nature of the proposed position is not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 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 on this ground.

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.