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U.S. Citizenship
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Services

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FILE: WAC 04 077 53658 Office: CALIFORNIA SERVICE CENTER Date: JUN 16 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 software development and consulting company and 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 indicating 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 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 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: establish accounts for capital and revenue income and expenditures; assist and direct staff with performing accounting and bookkeeping functions; verify, value, and appraise inventories, real property and equipment for record keeping, location, and usage; ensure compliance with GAAP, current accounting standards and applicable laws and regulations; report to management and assist management in defining, formulation and implementing practices for accounting and finance excellence; assist house developers/external consultants in providing domain knowledge and process to automate and enhance billing and accounting processes; prepare financial statements for managerial reporting and decisions; analyze records of financial transactions to determine accuracy and completeness of entries using computer skills; prepare forms and manuals for assignment of duties and responsibilities to staff performing weekly accounting and bookkeeping tasks, and evaluate weekly performance for corrections and incentives; verify and check contracts and prepare reports substantiating transactions prior to settlement; perform budgetary analysis and compare budgets with actual revenue and expenditures; compute payroll and filing of payroll taxes; ensure compliance with tax payments; perform internal audits; report monthly to management on variances in budget; prepare balance sheets, profit and loss statements, amortization, depreciation schedules, and other financial reports; file estimated taxes; assist in preparation of budgets; file payroll reports with government agencies; assist the internal auditor in compliance with audit functions; perform year-end closing, schedules and other financial reports as required by external auditors; gather information and prepare reports required for filing of corporate tax returns; analyze accounting and record keeping functions to meet with current technological development in computerized accounting systems; liaise with statutory, government authorities and bank or financial institutions; assist management in defining insurance and risk management policies; and conduct training on control for non-finance personnel. The petitioner requires a minimum of a bachelor’s degree in accounting/commerce or a related field 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 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, bookkeepers, accounting and financial clerks routinely: make entries to accounts; perform accounting and bookkeeping functions; establish accounting systems; prepare balance sheets, profit and loss statements, and other financial reports; assist in budget preparation; perform internal audits and check entries to accounts for accuracy and completeness; keep track of inventory; prepare reports to management for use in making business decisions; prepare payroll; make periodic tax payments; and open and close books for various accounting periods. The duty description provided by the petitioner does not indicate that the duties to be performed exceed in complexity the duties described and normally performed by full service bookkeepers, financial and/or accounting clerks. 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 are not of the complexity or strategic importance of those described for management accountants. The duties described are routinely performed in the industry by those with less than a baccalaureate level education. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further 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 entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits an opinion from [REDACTED] a business professor at Hofstra University. Dr. [REDACTED] opines that the duties of the offered position are professional-level in nature and represent the duties of an accountant which requires a baccalaureate level education. Dr. [REDACTED] opinion, however, is not supported by the record. The generic description of the duties provided does not permit such an analysis. It is incumbent upon the petitioner, in establishing a position as a specialty occupation, to describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests and business operations. CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the duties to be performed, however, is so generic that it is not possible to identify those tasks and, therefore, whether the position is that of an accountant, or an experienced bookkeeper, financial or accounting clerk. Further, without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As a result, the petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations and does not meet the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner also submitted copies of job advertisements for accountants. Those advertisements are also of little evidentiary value, however, as it cannot be determined that the proffered position is that of an accountant.

The petitioner asserts that it normally requires a degree for the proffered position, but offers no evidence in this regard. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). 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 or 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.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388.

Finally, the duties of the proffered position, as described, are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they 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 routinely performed in the industry by individuals with less than a baccalaureate level education in accounting or a closely related field. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (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 petitioner also asserts that the offered position is a specialty occupation by virtue of the position's job zone category and SVP rating. Neither the Department of Labor's *Dictionary of Occupational Titles (DOT's)* SVP rating nor a [REDACTED] category indicates 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. An SVP rating and [REDACTED] category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

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.