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U.S. Citizenship and Immigration Services

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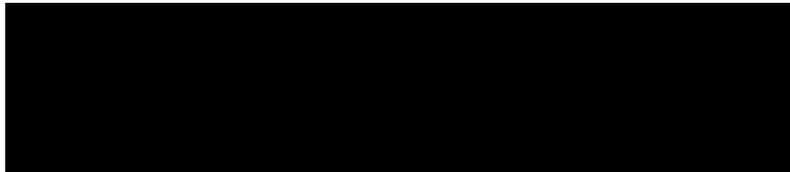


FILE: WAC 03 149 53166 Office: CALIFORNIA SERVICE CENTER Date: MAY 19 2005

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.

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 is a health care facility that 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; and counsel's December 5, 2003 and April 10, 2003 letters. According to this evidence, the beneficiary would perform duties that entail being responsible for record keeping of daily financial transactions; applying principles of accounting to analyze financial and billing information and prepare financial reports and billing statements; preparing bank reconciliation statements each month; auditing time cards and attendance reports; compiling and analyzing financial information to prepare entries to accounts such as general ledger accounts, and documenting business transactions; updating the company's bank balances; maintaining accounts payable and cash disbursement journals; preparing payroll; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets and profit and loss statements; and monitoring due accounts of suppliers and creditors. The petitioner stated that the proposed position requires a bachelor's degree in accounting or an accounting related field.

The director concluded that the proposed position is not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties align with those of a bookkeeper, which is an occupation that does not require baccalaureate-level education. The director stated that the proposed position's duties and responsibilities do not meet the complexity or scope of responsibility normally required of an accountant; that in examining whether a position is a specialty occupation the actual duties to be performed are determinative and not the title; and that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel relays that the petitioner has 62 employees, and narrates the beneficiary's proposed duties, which he states does not involve only bookkeeping/accounting clerk duties. Counsel asserts that the beneficiary will use accounting principles to analyze data, and will prepare reports from this analysis for the company's owners and management. Counsel states that the beneficiary will interface with the petitioner's independent external accountant and auditors; that the beneficiary will provide technical accounting advice on how to save on taxes and overhead, which involves knowledge of tax and accounting; that the health care industry is heavily regulated and that government authorities inspect and audit accounting records; and that hiring an in-house accountant is cost effective. Counsel submits additional evidence: a March 11, 2004 letter from the petitioner. This letter states that the beneficiary will provide accounting information relating to management, tax implications, and computer hardware/software acquisition.

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 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. The AAO routinely consults the *Handbook* to determine the duties and educational requirements of particular occupations.

The *Handbook* shows that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. Of these, the closest category to the proposed 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, and cost 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 proposed 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 prepare financial reports for nonmanagement groups such as stockholders, creditors, and tax authorities or provide performance evaluation and cost and asset management. On appeal, although counsel states that state and local authorities inspect and audit the accounting records of health care facilities, counsel does not indicate that the beneficiary will prepare financial reports for these regulatory agencies. Also, the beneficiary will not be part of an executive team. In light of this significant dissimilarity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of a position requiring baccalaureate-level education. 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 proposed position.

Nearly all of the beneficiary's duties are encompassed within the job description of bookkeeping, accounting, auditing and financial clerks. The *Handbook* indicates:

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.

The *Handbook* states:

Another change in these occupations is the growing use of financial software to enter and manipulate data. Computer programs automatically perform calculations that previously were done manually. Computers also enable clerks to access data within files more quickly and even generate statements automatically. . . .

The beneficiary will handle the recordkeeping of daily financial transactions; prepare financial reports, billing statements, and bank reconciliation statements; audit time cards and attendance reports; compile and analyzing financial information to prepare entries to accounts such as general ledger accounts, and document business transactions; update the company's bank balances; maintain accounts payable and cash disbursement journals; prepare payroll; analyze financial information detailing assets, liabilities, and capital; prepare balance sheets and profit and loss statements; and monitor due accounts of suppliers and creditors. Similarly, bookkeeping, accounting, auditing, and financial clerks total, balance, and reconcile billing vouchers; produce financial statements and prepare reports and summaries for supervisors and managers; maintain accounting records for the profit and loss statement; handle accounts payable, accounts receivable, and payroll; check figures, postings, and documents to ensure that they are accurate and properly coded; review invoices and statements; and update and maintain one or more accounting records.

On appeal, the petitioner states that the beneficiary will analyze and provide accounting information relating to management, tax implications, and computer hardware/software acquisition. The AAO notes that the *Handbook* indicates that a change for bookkeeping, accounting, auditing, and financial clerks is the growing use of financial software to enter and manipulate data, and using a computer program to automatically perform calculations that previously were done manually. As such, persons employed in these occupations would be knowledgeable about this technology. The petitioner's statement that the beneficiary will provide

accounting information relating to “management” and “tax implications” lacks clarity; therefore, it is not effective in differentiating the proposed position’s duties from those of bookkeeping, accounting, financial, and auditing clerks.

The *Handbook* indicates 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.

For the reasons discussed above, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

No evidence satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or show that its particular position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the beneficiary’s duties are performed by bookkeeping, accounting, financial, and auditing clerks, which are occupations that do not require baccalaureate-level education.

No evidence demonstrates that the petitioner normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

No evidence satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): 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. As discussed in this decision, the *Handbook* discloses that the beneficiary’s duties are performed by bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require baccalaureate-level education.

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.