

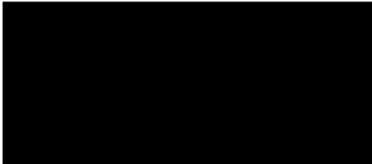


U.S. Department of Justice

Immigration and Naturalization Service

Public Copy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



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JUL 19 2001

File: EAC-00-163-51018 Office: Vermont Service Center

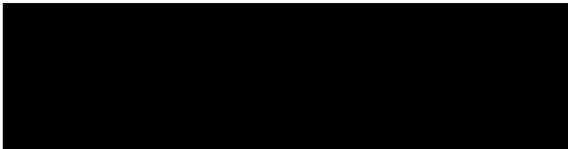
Date:

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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a motel with seven employees and a gross annual income of [REDACTED]. It seeks to extend its authorization to employ the beneficiary as an account clerk for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper or an accounting clerk. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks. On appeal, the petitioner states that the beneficiary will primarily perform accounting duties, and that the letter dated March 7, 2000, did not provide an adequate explanation of the duties to be performed by the beneficiary. The petitioner further states that the expanded description of the duties provided in counsel's letter dated June 27, 2000, demonstrates that the beneficiary would perform as a "corporate accountant." The petitioner also states that the duties of the offered position are more sophisticated than the duties of a bookkeeper or accounting clerk.

The petitioner's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The suitable applicant [is] required to manage and supervise staff, resolve complaints, hire and train personnel, and schedule duties for employees. He must also maintain records for payroll, stock control, income tax, etc.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with the petitioner's argument that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 20, the Department of Labor (DOL) describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. . . . They are usually part of executive teams involved in strategic planning or new product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which is in the motel business, employs approximately seven persons and has a gross annual income of [REDACTED]. The business in which the beneficiary is to be employed does not require the services of a corporate accountant who is part of an executive decision-making

team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

The duties that the petitioner endeavors to have the beneficiary perform are the payroll and financial transaction reporting duties, which are similar to the duties that a bookkeeper or accounting clerk would execute in a small business establishment. In contrast to the description of an accountant, at page 318 of the Handbook, the DOL describes the positions of a bookkeeper and accounting clerk as follows:

In small establishments, bookkeeping clerks handle all aspects of financial transactions. . . More advance accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping or accounting clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary will "maintain records for payroll, stock control, income tax..." Bookkeeping and payroll are not duties normally associated with a corporate accountant. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as accounting, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a bookkeeper or accounting clerk, rather than an accountant. According to the DOL at page 318 of Handbook, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Accordingly, it is

concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

With respect to the petitioner's objection to denial of this petition in view of the approval of a similar petition for the beneficiary in the past, current regulations pertaining to extensions of previously approved employment under the H classification provide the petitioner with appeal rights. The record reflects that the present petition was adjudicated properly and its subsequent appeal forwarded to the Associate Commissioner for Examinations in accordance with current regulations.

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.