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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-99-050-51196 Office: California Service Center

Date: NOV 20 2001

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:



Public Copy

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an oriental foods wholesaler with 35 employees and an approximate gross annual income of \$10.5 million. It seeks to employ the beneficiary as a financial accountant assistant for a three-year period. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel 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 concluded that the proffered position appears to be that of a bookkeeper or an accounting clerk and as such does not qualify as a specialty occupation. On appeal, counsel asserts that the petitioner's business is a medium-sized business with complex accounting requirements which only a financial accountant can render. Counsel argues that the proffered position is similar to positions as accountants which normally require a baccalaureate degree. Counsel contends the portions of the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) and Occupational Outlook Handbook (Handbook) relating to accountants support his argument. Counsel submits a photocopy of the portion of the DOT pertaining to positions as budget accountants.

Counsel'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:

Assisting management in preparing financial and profit and loss statements, analyzing the cash flow of the company, handling accounts receivable and payable.

In response to a Service request for additional information regarding the duties of the proffered position, Peter Chang, President of Family Food Company, Inc., described the duties of the position as follows:

Applies accounting principles to prepare financial report and analyze financial data and cash flow of the company. Compiles financial information to prepare general ledger, balance sheet, income statement, and budget to reflect company's assets, liabilities, and capital. Processes and maintains schedule of accounts receivable/payable and payroll. Prepare reports on revenue and expenditure patterns. Prepares and monitors year-end closing procedures.

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 counsel's argument that the proffered position parallels that of a "financial accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. Counsel asserts that the DOL has determined that the proffered position is a specialty occupation. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish an occupation is a specialty occupation. The DOT classification system and its

categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In its Occupational Outlook 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 an oriental foods wholesaler, employs approximately 35 persons and has a gross annual income of approximately \$10.5 million. The petitioner's business is clearly a medium-sized company. However, the evidence of record does not show that the petitioner's business requires 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. Nor does the record contain any evidence 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 of a bookkeeper or accounting clerk in a smaller business establishment. The Handbook describes the duties of a bookkeeper and accounting clerk as follows:

In small establishments, bookkeeping clerks handle all aspects of financial transactions... They record debits and credits, compare current and past balance sheets, summarize details of

separate ledgers, and prepare reports for supervisors and managers.

In large offices and accounting departments, more advanced accounting clerks may total, balance, and reconcile billing vouchers, ensure completeness and accuracy of data on accounts; and code accounts. They post transactions in journals and on computer files and update these files when needed. They may also review invoices and statements, to ensure that all information is accurate and complete, and reconcile computer reports with operating reports.

The duties of the proffered position relate more closely to those of a bookkeeper or accounting clerk than to those of a management accountant. For example, the petitioner states that the beneficiary will "[c]ompile financial information to prepare general ledger," and "Processes and maintains schedule of accounts receivable/payable and payroll." Bookkeeping, payroll, and routine accounts receivable and payable transactions 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 an 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.

Beyond the decision of the director, it is noted that the record contains the employment contract for the proffered position which states in pertinent part, "We hereby have the pleasure to confirm you into regular employment for an indefinite period [emphasis added] as from May 6, 1998." This statement clearly contradicts

the statement by the petitioner on the I-129 petition that the beneficiary has been offered employment for a period of three years.

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.