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U.S. Department of Justice

Immigration and Naturalization Service

Identification date deleted in
accordance with 8 CFR 101.12(b)
and 8 CFR 101.12(c)

OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC-01-077-51390

Office: Vermont Service Center

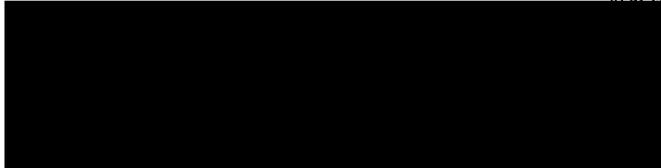
Date: 24 APR 2002

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, 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 law firm with 22 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a bookkeeper for a period of three years. The director determined the petitioner had not established that the proffered 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 denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the majority of the proposed duties are highly complex requiring a high degree of financial analysis and understanding of accounting principles. Counsel submits an expanded description of the proposed duties and argues that they are more sophisticated than the duties of a bookkeeper.

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:

She will be responsible for maintaining all accounts payable and receivable. This includes maintaining the computer program used for our accounts payable system. [The beneficiary] will be responsible for preparing checks for all payments due, updating the firm's vendor list and managing petty cash. [The beneficiary] will monitor the collection of all our client billing and will

assist in the monthly billing process. This process includes inputting all of our attorney's time, preparing and verifying the bills, and preparing any changes to the bills that are necessary. [The beneficiary] will be responsible for communicating with our clients regarding any delinquent payments due. She will also distribute the monthly accounts receivable report to all attorneys.

The bookkeeper is also responsible for all the banking. [The beneficiary] will maintain the ledger for all monies received, maintain and reconcile the bank accounts and prepare the daily bank deposits. She will be the link between our firm and the banking personnel.

[The beneficiary] will maintain and upgrade our time and billing software and communicate with all our Hispanic clients regarding any questions they may have with a case or billing issue.

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 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, 2002-2003 edition, 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. . . . Usually, management accountants are 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 a law firm, employs 22 persons and has a gross annual income of \$2 million. 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 primarily the payroll and financial transaction reporting duties, which are similar to the duties that a bookkeeping, accounting, or auditing clerk would execute in a small business establishment. In contrast to the description of an accountant, the DOL describes the positions of a bookkeeping, accounting and auditing clerk in its Handbook as follows:

In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. . . . More advanced 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 primarily within the scope of a bookkeeping, accounting or auditing clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary will be responsible for "maintaining all accounts payable and receivable" and "maintain[ing] the ledger for all monies received, maintain and reconcile the bank accounts and prepare the daily bank deposits..." Bookkeeping 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 a bookkeeper or accounting clerk, rather than an accountant. According to the DOL, the usual requirement for a bookkeeping, accounting or auditing 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.

The record contains two letters from individuals involved in the public accounting industry and two additional letters from individuals in law firms. All the writers state that the usual requirement for positions such as the proffered position is a baccalaureate degree in accounting. It is noted that the description of duties reviewed by the writers was the expanded version rather than the description that was submitted with the initial I-129 petition. While this expanded version is noted for the record, it is not indicative of the nature of the proffered position at the time of filing. As such, it provides little support for the instant petition. Accordingly, the letters are accorded little weight.

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.