



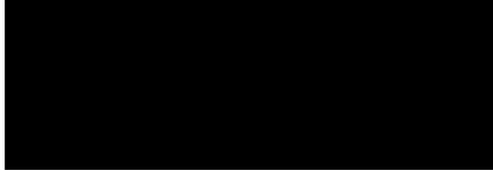
DA

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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



File: EAC-99-095-51014

Office: Vermont Service Center

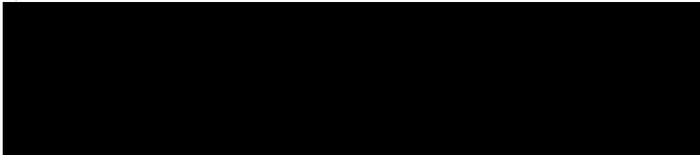
Date: APR 29 2002

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner describes itself as a retail supplier with 15 employees and a gross annual income of \$800,000. It seeks to employ the beneficiary as an accounting consultant 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 and additional documentation.

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 determined that, based on the size, type, and scope of the petitioner's business, the evidence of record does not show that the proffered position of accounting consultant is a specialty occupation.

On appeal, counsel argues that the director's decision is erroneous in that the existing law has been misapplied. Specifically, counsel argues that the duties of the proffered position ought to be the determining factor and not the petitioner's size and scope. In support of his argument, counsel cites Young China Daily v. Lois C. Chappell 742 F. Supp. 522, 1989 U.S. Dist. Counsel contends that, since the petitioner employs nearly 20 people, the petition was erroneously denied.

Counsel's statement on appeal is noted. However, the director did not deny the petition based on the size and scope of the petitioner's business. Rather, the director denied the petition because the record does not contain sufficient evidence to show that duties of the position require the services of an individual with a bachelor's degree in accounting. As stated by counsel, 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. The petitioner describes the duties of the offered position as follows:

1. Prepare reports that summarize and forecast business activities and its financial position in the areas of income, expenses, and earnings based on present and expected transactions in order to develop a budgeting system to control expenditures.
2. Analyze financial information to determine the various costs involved in operating the business of the company and check financial records for mismanagement, waste, and/or fraud in order to reduce expenses and increase the profitability of the company. Make recommendations to management regarding financial conditions of the company.
3. Compile and analyze financial information to prepare entries to accounts and prepare balance sheets and budgets [sic] statements.
4. Analyze changes in the volume of our merchandise, and other goods provided, to determine effects on costs and prepares periodic charts comparing monthly sales and purchase volumes.
5. Make recommendations with respect to financial conditions and the applications of funds with a view towards improving operations and the financial position of the corporation. Streamline and improve financial operations and perform business planning and financial management.

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.

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, (Handbook), 2002-2003 edition, at page 21, 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 in the convenience store business, employs 15 persons and has a gross annual income of \$800,000. 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 petitioner's description of the duties of the proffered position provides little impression of the beneficiary's actual day-to-day duties. For example, the petitioner has provided no indication as to the amount of the beneficiary's time to be spent on the various activities above. The petitioner's relatively small size and scope, while not dispositive, strongly suggest that the majority of the beneficiary's activities will combine those of an accounting clerk and an auditing clerk in a small business

establishment. A review of the Handbook finds no requirement of a baccalaureate degree in a specialized area for employment as an accounting clerk or auditing clerk. The usual requirement is a high school diploma or its equivalent. A higher level of training is favored but not required. 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 regulations.

Counsel argues that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that the proffered position is a specialty occupation. Counsel further argues that it has previously been found in Matter of Arjani, 12 I&N Dec. 649 and in Javier v. INS, 335 F. Supp. 1391 (1971) that the position of accountant qualifies as a profession under the statute and regulations in effect at that time. The Service does not contest the fact that positions as accountants require a bachelor's degree in accounting. Rather, the Service disagrees with counsel's argument that the duties of the proffered position are those of an accountant. As stated above, in this case, the proffered position appears to be that of an accounting clerk or auditing clerk with some elementary accounting duties.

Furthermore, a reference in the DOL's DOT, standing alone, is not enough to establish that 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.

Additionally, 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. In fact, according to the copies of the petitioner's 1998 federal, state, and local income tax returns were prepared by a certified public accountant (CPA).

The petitioner asserts that the degree requirement is common to the industry in parallel positions among similar organizations. In

support of its claim, the petitioner submits an advisory opinion letter from [REDACTED] an accountant for the accounting firm Rao, Ramesh Inc. [REDACTED] states that the duties of the proffered position are of an advanced and sophisticated nature customarily associated with one who has completed at least a baccalaureate degree in a specific field of study. He further states that it is appropriate for smaller businesses which are expanding rapidly to require the services of an accounting consultant. However, neither counsel nor the petitioner has submitted any independent evidence to corroborate this assertion. Furthermore, one letter does not exemplify an industry standard. In view of the foregoing, it is concluded that the record does not contain sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

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 391 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.

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.