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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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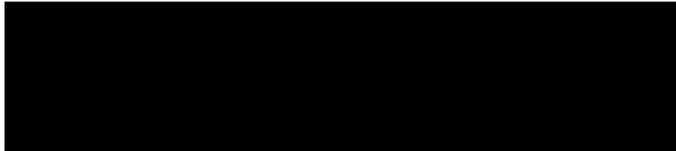
File: EAC-00-106-50462 Office: Vermont Service Center

Date: DEC 09 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, Vermont Service Center. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner owns and operates two franchise "7 Eleven" convenience stores. He has 12 employees and a stated gross annual income of \$2.5 million. The petitioner seeks to employ the beneficiary as an accounting consultant for a period of three years. The director determined that the proffered position appears to be that of a bookkeeper, an occupation that does not require a baccalaureate degree in a specific specialty.

On appeal, counsel argued that the director had erroneously denied the petition. Counsel indicated that a brief and additional documentation would be submitted on or before January 29, 2001. As of the issuance date of the Associate Commissioner's decision, the Service had not received a brief or evidence in support of the appeal. The Associate Commissioner for Examinations dismissed the appeal because the petitioner had failed to specifically identify any erroneous conclusion of law or statement of fact for the appeal or to submit any evidence to overcome the decision of the director.

On motion, counsel argues that the petitioner has demonstrated that he has more than a sufficient workforce, finances, and more than sufficient work to warrant the services of an accountant. Counsel asserts that it was held in an unpublished Administrative Appeals Unit (AAU) decision that a petitioner's size, scope and newness of operation are not dispositive.

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.

Counsel's argument on motion is noted. 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. Oversee compiling and recording of financial data. Examine the company's accounts and records to prepare financial statements and analyze the current and projected financial position of the company.
2. Analyze data 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.
3. Review financial operations of the company and develop projections of the company's financial position based on past, present and future earnings. Advise management regarding the effect of business activities on revenue and expenditure.
4. Analyzes changes in manufacturing methods, or services provided, to determine effects on costs. Analyzes actual manufacturing costs and prepares periodic reports comparing standard costs to actual production costs.
5. Define and analyze business, financial and accounting problems and design their solutions using [c]omputers. Designing programs for the [c]ompiling and recording of financial data. Analyzes user requirements, procedures, and problems by use of computers. Upgrades system and corrects errors to maintain system after implementation.

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 proffered position is that of a "management 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, 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, who is the owner and operator of two franchise 7-Eleven convenience stores, employs 12 persons and has a gross annual income of \$2.5 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 petitioner's description of the duties of the proffered position is vague and provides little insight into the beneficiary's actual day-to-day duties or the percentage of time spent on each duty. As counsel states, the size and scope of a petitioner's business are not dispositive. However, the duties of this position do not appear to be those of a corporate accountant. Rather, they are similar to the duties that a bookkeeper,

accounting clerk or auditing clerk would execute in a small business establishment. In contrast to the description of an accountant, at page 390 of the Handbook, the DOL describes the positions of a bookkeeping clerk, accounting clerk, and auditing clerk as follows:

In small establishments, *bookkeeping clerks* handle all aspects of financial transactions and bookkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . 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. . . . Senior accounting clerks also review computer printouts against manually maintained journals and make necessary corrections. They also may review invoices and statements to ensure that all information is accurate and complete, and reconcile computer reports with operating reports.

Auditing clerks verify records of transactions posted by other workers. They check figure, postings, and documents for correct entry, mathematical accuracy, and proper codes. . . .

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping, accounting clerk, or auditing clerk position. For example, the petitioner states that the beneficiary will "examine the company's accounts and records to prepare financial statements" and "oversee compiling and recording of financial data." The compiling and recording of financial data and preparation of financial statements are not duties normally associated with a management accountant.

A review of the Handbook finds no requirement of a baccalaureate degree in a specific specialty for employment as a bookkeeper, 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.

It is noted that the petitioner's franchise agreement with 7-Eleven states at item 10, "**Daily Deposits, Bookkeeping Records and Financial Summaries:**

7-Eleven shall have the right, under the terms hereof, to maintain, as part of its records and in accordance with this Agreement, Bookkeeping Records on FRANCHISEE'S

operation of the store. FRANCHISEE may perform or obtain any additional bookkeeping FRANCHISEE desires. FRANCHISEE shall: (i) properly date and timely submit the Cash Report; (ii) deposit the Receipts for each Collection Period within 24 hours after the end of the Collection Period, in the Bank or night depository designated by 7-ELEVEN, except cash expended. . .

FRANCHISEE shall prepare and furnish to 7-ELEVEN, on forms and at times acceptable and as requested by 7-ELEVEN: (i) daily summaries of Purchases; (ii) daily reports of Receipts; (iii) weekly time and wage authorizations for FRANCHISEE'S Store employees. . . .

IF FRANCHISEE is not in breach of this Agreement, 7-ELEVEN shall: (i) provide Financial Summaries for FRANCHISEE for the store prepared from bookkeeping Records in the form of an income statement and a balance sheet for each Accounting Period or any portion thereof. . . .

The agreement further states at Item 12, "**Audits**":

7-ELEVEN shall cause at least one Audit to be made each calendar or other designated quarter and, upon FRANCHISEE'S request, shall provide additional Audits for a fee of an amount equal to .5% of the Retail Book Inventory. . . .

The record contains a financial summary prepared for the petitioner by the 7-Eleven parent company, including an income/expense summary; various supplemental income/expense detail summaries; balance sheet and net worth reconciliation; monthly draw available calculation; detail general ledger; and monthly summary of franchise. Since the 7-Eleven parent company provides the petitioner with the type of detailed financial reports, data analyses, and income projections that the beneficiary would purportedly prepare, there is no necessity for the petitioner to engage the beneficiary as an accountant to perform these same functions. It is concluded that the petitioner is not hiring the beneficiary to perform the more complex accounting tasks a management accountant would perform, but rather the daily bookkeeping tasks, such recording of transactions, expenses, purchases, and payroll functions, that are normally performed by bookkeepers in a small enterprise. Thus, the petitioner has not shown that a bachelor's degree in accounting or a related field is the normal minimum requirement for entry into the occupation.

Additionally, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in accounting for the offered position. In fact,

the petitioner's 1998 federal, state, and local income tax returns were prepared for him 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 this claim, the petitioner submits an advisory opinion letter from Rao Nepalli, an accountant for the accounting firm Rao, Ramesh Inc. Mr. Nepalli 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 in accounting or a related field.

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 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.