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U.S. Department of Justice
Immigration and Naturalization Service

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



File: WAC-01-084-52346 Office: California Service Center Date: 16 DEC 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: SELF-REPRESENTED

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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, 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 wholesale wireless communications business with fifteen employees and an approximate gross annual income of \$2.5 million. The petitioner seeks to employ the beneficiary as an accountant-manager 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's president submits a statement, a revised description of the duties of the offered position, 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 concluded that the petitioner had failed to demonstrate that the proffered position could only be successfully performed by an individual who possessed a baccalaureate or higher degree in a specific specialty. 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's president argues that the duties of the proffered position are comparable to the duties of the position of an accountant as listed in the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook).

The statements made by the petitioner's president on appeal are 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:

Following up books of accounts, financial evaluation of foreign currency. Management reports based on export activities. AP/AR Bank wire transfers, taxes, management relationship USA - Europe.

In response to a subsequent Service request for additional information regarding the offered position, the petitioner's president provided the following description of the duties of the beneficiary in the position:

1. Maintain and follow up books of accounts: Accounts Receivable and Accounts Payable (Overseas) General Ledger, General Journal, Job Reports, Financial Statements (estimate and cost by type) - require[s] college degree or equivalent degree in economic studies. Time required: 48%
2. Prepare financial evaluation of foreign currency - updates and estimates of foreign currency fluctuation - Bank transfers. Time required: 15% (require[s] economic studies)
3. Billing; Internal Control - profit and loss statements; Compute taxes. Time required: 10% (require[s] general accounting studies)
4. Management reports based on exports activity. Direct contact wit [sic] East European and European partners from Germany, Hungary, Romania, Poland, Bulgaria (require[s] knowledge and experience in European market system) Time required: 27%

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 argument that the duties of the proffered position are comparable to the duties of the position of an accountant. While the petitioner's president provides a revised description of the duties for the offered job on appeal, this revised description appears to simply paraphrase some of the duties described in the DOL's Handbook, 2002-2003 edition, for the position of an accountant. The position being offered by the petitioner, however, does not appear to be primarily that of an accountant when viewed in light of the two prior descriptions of the duties of the offered position cited above. The duties of the proffered position appear to combine those of the positions of a bookkeeping clerk, accounting clerk, auditing clerk, and marketing manager, rather than those of an accountant. In its Handbook, 2002-2003 edition, at page 21, the 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. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in areas including financial analysis, planning and budgeting, and cost accounting.

The duties of the offered job do not reflect any activity which could be construed as involvement in an executive decision-making team. Furthermore, there is no evidence that the proffered position 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 management accountant.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the 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 bookkeeping, accounting, and auditing clerk in its Handbook as follows:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, and prepare reports for supervisors and managers....

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. They post transactions in journals and on computer files and update these files when needed....

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

The majority of the duties of the proffered position relate more closely to those of the positions of bookkeeping, accounting and auditing clerk than to those of a management accountant. For example, the petitioner indicates that the beneficiary will maintain and update all financial records and statements including the general ledger, accounts receivable, accounts payable, job reports, as well as the evaluation of foreign currency. Bookkeeping, routine accounts receivable and payable transactions, and the evaluation of foreign currency are not duties normally associated with a management accountant.

The petitioner indicates that the remainder of the proffered position's duties parallel those of a marketing manager because such duties require knowledge and experience in the European market system in order to maintain and expand contacts with current and potential business partners in Germany, Hungary, Romania, Poland, and Bulgaria. A further review of the Handbook finds no requirement of a baccalaureate degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing managerial positions. Some employers prefer degrees in business administration but bachelor's degrees in various liberal arts fields are also acceptable. Certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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. The petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position. 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. 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.