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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: EAC-00-279-52152 Office: Vermont Service Center Date: 04 FEB 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 is a business which buys and sells new and used hotel and casino furniture. It has five employees and a gross annual income of \$771,909. The petitioner seeks to employ the beneficiary as an accountant for a period of three years. The director determined that 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 denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper or an accounting clerk. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks. On appeal, counsel argues that the petitioner has shown that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the profession and there is, therefore, no necessity for the petitioner to show that the proffered position meets any of the other criteria for a specialty occupation. Specifically, counsel asserts that the proffered position is that of an accountant, an occupation that requires at least a bachelor's degree in accounting.

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 proffered 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 proffered position as follows:

Applies principles of accounting to analyze financial information and prepare financial reports. Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. Analyzes financial information detailing assets, liabilities and capital, and prepares balance sheet, profit and loss statement and other reports to summarize current and projected company financial position. Audits contracts, orders and vouchers, and prepares reports to substantiate individual transactions prior to settlement. Establishes, documents and coordinates implementation of accounting and accounting control procedures. Established computer-based system for general accounting.

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.

On appeal, counsel asserts that the Department of Labor has determined in its Dictionary of Occupational Titles (DOT) that the position of accountant is a specialty occupation. In support of his assertion, counsel submits a photocopy of the section of the DOT which describes the duties of an accountant.

However, a reference in 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 Department of Labor in the various editions of the Occupational Outlook Handbook (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. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. They are usually part of executive teams involved in strategic planning or new product development. Management accountants analyze and interpret the financial information 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 record reflects that the petitioner, which is in the business of buying and selling used hotel and casino furniture, employs approximately five persons and has a gross annual income of \$771,909. 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 Service does not contest counsel's statement that a baccalaureate degree in accounting is a minimum requirement for employment as an accountant. However, the record does not contain sufficient documentation to show that the proffered position is

indeed that of an accountant. As counsel himself states, the petitioner's description of the duties of the proffered position has been copied word for word from the description of the duties of an accountant as set forth in the DOT. However, this description is a generic description of the types of duties typically performed by accountants. Neither counsel nor the petitioner has made any effort to explain the day-to-day duties the holder of the proffered position will actually perform. For example, the petitioner states that the beneficiary will audit contracts, orders and vouchers, and prepare reports to substantiate individual transactions prior to settlement. However, the petitioner has not explained what contracts, orders and vouchers are used by a furniture liquidation business, or what types of transactions the petitioner engages in which necessitate the generation of a report prior to settlement.

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. In contrast to the description of an accountant, at page 318 of the Handbook, the DOL describes the positions 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. . . . 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. They post transactions to 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 types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping or accounting clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary will "prepare entries to accounts, such as general ledger accounts," and "prepares balance sheet, profit and loss statement and other reports. . ." Bookkeeping and preparation of balance sheets and profit and loss statements 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.

Lee M. Border, President of Hotel Furniture Liquidators, states in her letter dated September 13, 2000, "The fact of the matter is that I would never consider anyone, including Mr. Patel, for the

position that I have in mind for him (Accountant) who did not have at least [a] Bachelor's Degree and not just any Bachelor's Degree, but a Bachelor's Degree in Accounting or closely related field..." However, no evidence has been submitted such as a job advertisement specifying that a bachelor's degree in accounting is a requirement for the proffered position. The petitioner's stated desire to employ the beneficiary is not a sufficient basis for a finding that the proffered position qualifies as a specialty occupation.

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

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 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.

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.