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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-00-207-52642

Office: Vermont Service Center

Date: 08 JUL 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, a court reporting firm, is the subsidiary of a corporation providing consulting and managed staffing services. The petitioner's corporate owner has 400,000 employees and a stated gross annual income of \$3.2 billion. The petitioner seeks to employ the beneficiary as a strategic billing analyst for a period of two years and eleven months. 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 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. On appeal, counsel argues that the proffered position is a specialty occupation because it required a bachelor's level degree in a business related field. Counsel asserts that other organizations routinely employ billing analysts with business related degrees. Counsel contends that the petitioner has had three other billing analysts over the past ten years, as well as another individual currently employed in the same position, who all possess bachelor level degrees in a business related field.

Counsel's statements 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 a separate letter which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- * analyze and prepare written reports on monthly billing charges and receipts;
- * analyze payment habits for individual clients and the overall clientele;
- * audit and validate entries to insure completeness, accuracy and completion of billing entries in time for month end closing;
- * Set and maintain billing schedules and invoice mailings;
- * prepare billing summaries and account histories;
- * Liase [sic] with clients, court reporters and management to resolve any billing issues or errors;
- * recommend collections actions for delinquent accounts.

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 proffered position would normally require a bachelor's degree in a business related field. The duties of the proffered position appear to parallel those of the positions of bookkeeping, accounting and auditing clerk, rather than those of an accountant. 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. 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 review of the description of the duties of the offered job does 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 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 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 duties of the proffered position relate more closely to those of the positions of bookkeeping, accounting and auditing clerk than to those of a corporate accountant. For example, the petitioner states that the beneficiary will "audit and validate entries to insure completeness, accuracy and completion of billing entries in time for month end closing" and "[s]et and maintain billing schedules and invoice mailings." 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.

Counsel asserts that other organizations routinely employ billing analysts with business related degrees. Although the record contains six separate internet job postings for the position of billing analyst, 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. Additionally, these six job postings are insufficient evidence of an industry standard. Accordingly, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel contends that the petitioner has had three other billing analysts over the past ten years, as well as another individual currently employed in the same position, who all possess bachelor level degrees in a business related field. However, the petitioner has failed to submit any evidence, such as diplomas or academic transcripts which would tend to support such a contention. Therefore, 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. The job fits the descriptions of bookkeeping, accounting, and auditing 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 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.