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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
CIS, AAO, 20 MASS, 3/F
Washington, DC 20536

[Redacted]

File WAC-02-036-50194

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

APR 14 2002

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)

ON BEHALF OF PETITIONER:

[Redacted]

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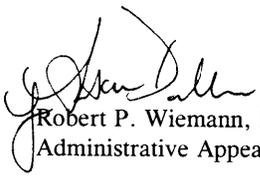
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Arizona company that owns three beauty salons. It has 16 employees and a gross annual income of \$426,192 dollars. It seeks to temporarily employ the beneficiary as a controller for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Bureau misclassified the proffered position as a manager and submits additional documentation with regard to the petition.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the California Service Center on November 7, 2001, the petitioner described the position as controller, and explained the duties of the proffered position as follows:

Directs financial activities of three hair salons owned by [the petitioner]. Prepares reports and business activities and manages accounting departments. Directs financial planning for hair salons and directs and prepares budgets and reports to the president/human resource manager of the corporation.

The petitioner also submitted an educational equivalency document from World Education Services, Inc. that indicated the beneficiary's university degree in accounting from Islamic Azad University was the equivalent of a bachelor's degree from an accredited university in the United States. The petitioner also submitted the beneficiary's transcript and letters from previous employers, as well as Federal corporate tax returns and photographs of the petitioner's business. The petitioner submitted an uncertified ETA Form 9035.

On January 25, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. The director stated that the duties as described are similar to those of a manager or executive and that positions which involve managerial or executive duties are not generally considered specialty occupations unless their duties involve supervision of persons who are themselves considered to be employed in specialty occupations. In addition the director requested a detailed description of the beneficiary's specific job duties and level of responsibility, the hours per week of work and percentage of time to be spent on each duty, among other information items. The director also requested an explanation of why the proffered position required the services of a person who has a college degree or its equivalent in the occupational field. Finally the director noted that the Labor Condition Application (LCA) submitted by the petitioner was missing page 3.

In response, the petitioner submitted a job description of controller taken from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*. The petitioner stated that the beneficiary would spend 100 percent of her time performing the

controller duties outlined in the petition, 40 hours a week, and would not supervise any employees since she will not be a manager. The petitioner submitted a duplicate certified copy of the ETA 9035.

On March 14, 2002, the director denied the petition. The director stated the following:

[it]appears that the duties encompass managerial and supervisory aspects of overseeing an office and business. The Department of Labor's *Occupational Outlook Handbook (OOH)*, 2000-2001 edition, makes no finding that a baccalaureate degree or higher is a common industry requirement for managers.

The director reiterated comments made in the request for further information with regard to positions involving managerial or executive duties and also stated that a reference to the *DOT* was not sufficient to establish that a proffered position is a specialty occupation. Finally the director determined that the petitioner had not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel reiterates that the proffered position is not a managerial position, but rather a financial controller position. As evidence of this, counsel states that the category selected for the Form ETA 9035P was Code 160 which is "accountants, auditors, and related occupations." Counsel also submits an excerpt about treasurers, controllers, and chief financial officers from the Department of Labor online wage library website.

With regard to counsel's reference to *DOT* classifications, it should be noted that the Bureau does not consider the *DOT* a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position as a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

With regard to the first criterion, the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

With regard to the proffered position, the petitioner has described the job as a controller. The basic duties of controllers are described within the financial manager classification in the *Handbook*. On page 52, the *Handbook* states:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. . . . The duties of financial managers vary with their specific titles, which include controller, treasurer, credit manager, and cash manager. Controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments.

The *Handbook* states the following about the training and educational requirements for financial manager/controller positions: "A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers."

However, in comparing this *Handbook* classification with the described duties of the proffered position, it is not clear from the evidence on the record that the proffered position is that of a controller. The position description contains generic terms such as "direction of financial activities," "preparation of reports and business activities," and "the management of accounting departments." However, the record contains no specific information on how many accounting departments the petitioner presently has, the volume of financial transactions or systems, what types of reports and business activities the beneficiary would be preparing, and with what frequency. In addition, there is no specific information with regard to what the direction of financial activities for three hair salons would consist of.

The critical element in the analysis of this criterion is not the employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹

Without more persuasive testimony, the proffered position appears to be more analogous to that of bookkeeper. On page 391, the *Handbook* describes the work duties of bookkeepers:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . In small establishments, bookkeeping clerks handle all financial transactions and record keeping, They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification.

Without more persuasive evidence, the Bureau finds that the proffered position appears to be that of a bookkeeper for a small business. As such the evidence presented to date does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

With regard to the second criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely, that the degree requirement is common to bookkeeping positions in similar businesses, the petitioner has submitted no further evidence for the record. With regard to the third criterion, namely that the employer normally requires a degree or its equivalent for any bookkeeper positions, to date, the petitioner has submitted no evidence to establish that it has ever hired a bookkeeper previously, or that it has required its bookkeepers to have a bachelor's degree in a specific specialty.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the nature of the specific duties is

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, as stated previously, the petitioner has not provided sufficient evidence to establish that the petitioner's job is a controller position as opposed to a bookkeeper position. Furthermore, the description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any more specialized or complex than the duties of any other bookkeeper. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.