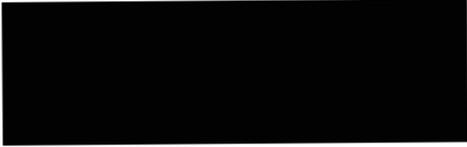


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

**PUBLIC COPY**



APR 21 2003

File: SRC-02-041-51754 Office: Texas Service Center

Date:

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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

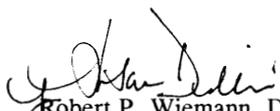
INSTRUCTIONS:

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 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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a beauty salon with five employees and a gross annual income of \$350,000. It seeks to employ the beneficiary as a finance manager 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.

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 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 after determining that the record did not support a finding that the proffered position required the services of an individual with at least a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the proffered position closely resembles that of a comptroller for a small firm, and requires the services of an individual with professional expertise in the area of financial management.

Counsel's assertion on appeal is not persuasive. 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 Bureau considers. In its letter of November 8, 2001, the petitioner described the duties of the offered position as follows:

As a Finance Manager, [the beneficiary] will be responsible for direct[ing] financial activities of [the] organization. He will be responsible for budget, financial projections, and pricing and cost estimates. He will also [be] responsible for certain administrative functions, including hiring and firing of personnel. On the business side, [the beneficiary] will work closely

with clients and with company agencies in order to expand our client base, and will keep the accounts and books for the accountant to review. He will negotiate leases and purchase order[s].

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 Bureau does not agree with counsel's argument that the proffered position of finance manager is analogous to that of a comptroller for a small firm. Counsel states, on appeal, that the definition of "financial manager" set forth in the *Occupational Outlook Handbook (Handbook)*, 200-2001 edition, which was used by the Bureau in rendering its decision, is inadequate and overly restrictive. Counsel asserts, instead, that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991).

However, the *DOT* is not considered a persuasive source of information regarding whether a particular job requires Counsel (the petitioner) asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered 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 simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

Although the petitioner's description of the duties of this position appear to paraphrase some of the duties of a financial manager, as described by the DOL in the 2002-2003 edition of the *Handbook*, the Bureau is not persuaded to classify the position as that of financial manager or controller.

At page 52 of the *Handbook*, the DOL indicates that the duties performed by financial managers vary according to the specific titles, which include those of controller, treasurer, credit manager, and cash manager. These include the following:

- Directing the preparation of financial reports summarizing and forecasting the organization's financial position;
- Preparing special reports required by regulatory authorities;
- Directing the organization's financial goals, objectives and budgets;
- Overseeing the accounting, audit, and budget departments;
- Overseeing the investment of funds and managing associated risks; and
- Executing capital-raising strategies to support a firm's expansion, and dealing with mergers and acquisitions.

As noted previously, the petitioner, a beauty salon, employs five individuals and has an approximate gross annual income of \$1 million. The business in which the beneficiary is to be employed does not require the services of a financial manager/controller to perform complex or advanced financial duties such as preparing special reports required by regulatory authorities, overseeing the

investment of funds and managing associated risks, executing capital-raising strategies to support the firm's expansion, or negotiating mergers and acquisitions.

Rather, the proffered position appears to combine the duties of a bookkeeping, accounting and auditing clerk with those of a general or operations manager. In its position description, the petitioner indicates the beneficiary "will keep the accounts and books for the accountant to review." Such financial record-keeping duties correspond to those a bookkeeping, accounting and auditing clerk would execute in a small business establishment, and would not normally be performed by a financial manager or controller. The administrative functions of the proffered position, such as the hiring and firing of personnel, are indicative of those assigned to a general or operations manager.

At page 390 of the Handbook, the DOL describes the positions of bookkeeping, accounting and auditing clerks as follows:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. . . . They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

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. They also correct or note errors for accountants or other workers to adjust.

According to page 387 of the Handbook, the usual requirement for a bookkeeping, accounting and 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.

The DOL describes the duties of general or operations managers at page 87 of the Handbook as follows:

*General and operations managers* plan, direct, or coordinate the operation of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. . . .

Additionally, the DOL states at page 86 of the *Handbook*:

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

A review of the *Handbook* finds no requirement of a baccalaureate degree in a specific specialty for employment as general or operations managers. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic 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.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as finance, for the offered position. Third, 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 with baccalaureate degrees in a specific specialty 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. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the record does not contain an evaluation of the beneficiary's credentials for a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As this matter will

be dismissed on the grounds discussed above, however, the issue of the beneficiary's qualifications need not be examined further.

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.