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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: LIN 02 103 53107 Office: NEBRASKA SERVICE CENTER Date: AUG 22 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

PUBLIC COPY

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a Chicago home health care agency with 27 employees and a gross annual income of $1,000,000. It seeks to temporarily 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 was a specialty occupation, because the listed duties fell under the job title of bookkeeper or accounting clerk rather than accountant.

On appeal, counsel asserts that the duties of the proffered position correspond to those described in the DOL *Occupational Outlook Handbook* (*Handbook*) at page 21 under the job title of accountant, which the Bureau concedes is a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 described job duties establish that the proffered position is a specialty occupation. In the original petition filing, the petitioner described the duties of the proffered position as follows:

Development and Analysis of Budgets and Forecasts (35%)
Reports finances of establishment to management and advises management, advises management about resource utilization, tax strategies and assumptions underlying budget forecasts. Develops, implements, modifies, and documents budgeting, costs, general, property, and tax accounting systems. Computes taxes owed, ensures compliance with tax payment, reporting and other tax requirements, and represents establishment before taxing authority.

Financial Statement Preparation and Analysis of Results (35%)
Develops, maintains, and analyzes budgets and prepares periodic reports comparing budgeted costs to actual costs. Prepares balance sheet, profit and loss statement, amortization and depreciation schedules and other financial reports using calculator or computer with assistance of bookkeeper.

General Ledger Account Analysis and Reconciliation (15%)
Analyzes financial information detailing assets, liabilities and capital and prepares balance sheet, profit and loss statement, and other reports prepared by bookkeeper to summarize current and projected company financial position. Analyzes records of financial transactions to determine accuracy and completeness of ledger entries performed by bookkeeper. Establishes, modifies, documents, and coordinates Implementation of accounting and accounting control procedures.

Monthly Closing of the Books (15%)
Analyzes operations, trends, costs, revenues, financial commitments, and obligations incurred to project future revenues and expenses. Devises and implements manual or computer-based system for general accounting. Surveys establishment operations to ascertain certain accounting needs. Directs and coordinates activities of accounting clerks and bookkeepers.

On April 22, 2002, the director denied the petition. The director found that the proffered job duties are primarily financial transaction reporting duties similar to those performed by a bookkeeper or accounting clerk in a small business establishment. The director pointed out that the DOL *Occupational Outlook Handbook* (*Handbook*) reports that a high school diploma is the usual requirement for bookkeepers and accounting clerks.

In carefully reviewing the nature of the prospective duties of the beneficiary, however, it appears that the proffered position may correctly be classed as a specialty occupation, since a large portion of the duties entail those attached to the job of accountant. According to the *Handbook*, accountants analyze financial information, prepare budgets, and perform cost and asset management, as well as prepare financial reports and tax returns, develop data-processing systems, and audit financial statements. These duties form the foundation of the proffered position. It does not appear that bookkeeping and clerical work form the greater portion of the job duties. It is noted that the size of a company is not necessarily a determining factor in whether a job would qualify as a specialty occupation. *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal 1989). Since the position is essentially that of accountant, which requires a bachelor's degree and is admittedly a specialty occupation, the proffered position should so thus be classified.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.