

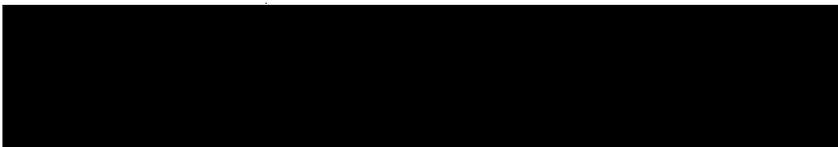
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



File: SRC 01 213 51401

Office: TEXAS SERVICE CENTER

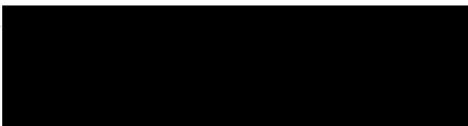
Date: JUL 07 2003

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:



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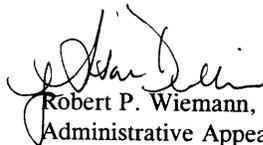
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a Texas company that operates convenience food stores. It has 3 employees and a gross annual income of approximately \$640,000. The petitioner seeks to employ the beneficiary as an accountant for a period of three years. The director determined that the petitioner failed to establish that the proffered position was a specialty occupation. Counsel appeals that determination alleging that the position 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 further 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.

Counsel asserts that the position of accountant is a specialty occupation. The Bureau does not simply rely on a position's title 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 the I-129 petition, the duties of the offered position were described as: "Will provide professional services as [an] Accountant with responsibility. Will be head of Accounting which [sic] duties will include preparation of financial statements, tax reports, reporting to Federal, State and Local government[s], will

handle IRS audit & requirements." The petitioner further indicated in a letter supporting the I-129 petition that the beneficiary "will be responsible for leading a team of accounting professionals in designing the [sic] system of bookkeeping, record keeping, preparation of monthly, quarterly, semi[annual], and annual financial statements and reports."

Subsequent to the filing of the initial petition, the director asked the petitioner to submit documentation explaining "why a convenience store with 3 employees requires an accountant," and "what professionals" the beneficiary would be "leading." The petitioner responded that it had purchased a second store with an additional 3 employees and that each store had "one assistant accounting clerk professional" to be led by the beneficiary.

In the petitioner's appeal to the AAO, additional job responsibilities were detailed as follows:

In this position, one of Ms. [REDACTED] many responsibilities will be leading a team of assistant accounting clerk professionals in that she will be overseeing the daily record keeping, reconciling cash with sales reports and preparing daily deposits and sales reporting of these employees engaged in the day to day sales activities of the company. This team of assistant accounting clerk professionals will increase as our company purchases additional retail outlets. Additionally, Ms. [REDACTED] will be responsible for accumulating financial documentation from employees and compiling and preparing annual and quarterly reports. Ms. [REDACTED] other major responsibilities will consist of (i) preparing financial statements, payroll, and sales and payroll tax; (ii) reconciling general ledger accounts; (iii) maintaining payable and receivable records; (iv) preparing depreciation schedules to apply to capital assets; (v) coordinating payable and receivable functions; and (vi) preparing compliance and tax reports.

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 qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to the duties that would be performed by a bookkeeper, accounting or financial clerk. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at pages 387-390, the Department Of Labor describes in part, the duties of bookkeeping, accounting, auditing and financial clerks as follows:

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 . . . They . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . More advanced accounting clerks may total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory calculate payroll. . . .

The duties associated with the offered position fall within the scope of the duties described above. The *Handbook* further notes that the majority of financial clerk positions require at least a high school diploma, but some college is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. *Id* at 387. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

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 accounting, for the offered position. Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in

the industry commonly require a bachelors degree or its equivalent, or that the subject position is so complex or unique that it could be performed only by an individual with a degree. 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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

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, financial or accounting clerk, rather than an accountant. According to the *Handbook*, the usual educational requirements for these occupations range from a high school diploma to an associate college degree. It is therefore 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.

