

PUBLIC COPY

**Identifying data deleted to
prevent clear and warranted
invasion of personal privacy**

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

File: WAC 01 077 57273 Office: California Service Center

Date: JUL 29 2006

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:

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

The petitioner is a corporation that engages in the sale of audio-video equipment. It has 51 employees and gross annual income exceeding \$574,300,000. The petitioner seeks to employ the beneficiary as an accountant for a period of three years. The director determined that the job duties of the proffered position were "basically those of a general accountant", but that the beneficiary did not qualify to perform the services of an accountant.

On appeal, counsel submits a brief. Counsel states that the director failed to consider the beneficiary's relevant coursework and progressively responsible work experience when determining she was not qualified for the proffered job. Additionally, counsel states that the denial of this petition is inconsistent with the approval of another H-1B petition whose beneficiary had the same educational background and work experience as this beneficiary.

The first issue to be considered is counsel's assertion that the beneficiary should be granted an H-1B visa because the Bureau previously approved a petition for another beneficiary with similar educational and work experiences. In support of this assertion counsel provides documentation indicating that Ms. [REDACTED] has been granted H-1B status to work as an accountant with the equivalency of a Bachelor of Business Administration degree.

The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. The documentation supplied by counsel in the [REDACTED] case, states generally the duties associated with the proffered position. Those documents do not however, contain statements from Ms. [REDACTED] prior employers detailing her job responsibilities so as to permit an independent evaluation of her qualifications for the position offered her. It is, therefore, not possible to determine whether that petition was properly approved, or approved in error. Furthermore, any decision made by the service center lacks precedential authority and the Bureau is not bound to follow any such decision. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Implicit in the director's denial letter is his conclusion that the proffered position is a specialty occupation. In denying the petition on the basis of the beneficiary's qualifications, which include the equivalent of a Bachelor of Business Administration by a regionally accredited university in the United States, the director stated:

Business administration is a general term, including both professional and nonprofessional activities. A [d]egree in business administration alone is insufficient to qualify the holder as a member of the professions or of a specialty occupation. A [d]egree in business administration may be sufficient, if the academic course pursued and the knowledge gained are realistic prerequisites to a particular occupation within the broad field of business administration and that person is engaged, or intends to engage, in that occupation. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The petitioner has not shown that the academic course work pursued and the knowledge gained by the beneficiary were realistic prerequisites for the position of accountant.

Pursuant to 8 C.F.R. 214.2 (h)(4)(iii)(c), one of the following criteria must be met in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

According to the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 22, most accountant positions require at least a bachelor's degree in accounting or a related field. For example, most entry level accounting positions in the federal government require four years of college, with at least 24 semester hours in accounting. The applicant's formal education is equivalent to two years of undergraduate study in Fashion Design and related subjects at a regionally accredited university in the United States. She also

has obtained a Certificate in Business Administration from the Berkley extension of the University of California in San Francisco. The Berkley certification required the beneficiary to complete 19 credit units. The following coursework was completed for certification:

- 2 units - Organization and Management
- 2 units - Import/Export: Trade Operations
- 3 units - Accounting I, Introduction
- 2 units - Essentials of Economics
- 2 units - Essentials of Marketing
- 2 units - Management of Human Resources
- 2 units - Basic Corporate Finance
- 2 units - Integrated Marketing Communications
- 2 units - Essentials of Public Relations

The applicant does not qualify to perform the services of a specialty occupation. First, she does not hold a baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Second, she does not hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Third, the position does not require the beneficiary to possess a license, registration or certification.

Finally, the beneficiary's education, training and work experience are not equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation. The beneficiary's education and work experience are equivalent to a bachelor's degree in business administration, not accounting. As noted above, even entry level accounting positions with the federal government require at least 24 semester hours in accounting, with related business degrees. The beneficiary is deficient in this regard.

The beneficiary's work history has exposed her to a business environment with some accounting related functions. For example, she has collated invoices, sales and payment records; retrieved information from purchase orders; prepared some balance sheets and other financial documents; maintained expense accounts; and balanced sales, and accounts receivable/payable. Those job responsibilities, however, are not responsibilities that can be performed only by someone with a minimum of a bachelor's degree in accounting or some related field. The beneficiary's training and experience is not equivalent to a baccalaureate or higher degree in the field of accounting. The petitioner has failed establish the beneficiary's qualifications for the proffered position.

Beyond the decision of the director, the proffered position does not qualify as a specialty occupation. The director stated that

"the job duties described are basically those of a general accountant." No further analysis was made. 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.

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.

The petitioner detailed the responsibilities associated with the proffered position as follows:

1. General accounting duties including regular balancing of sales and accounts receivable and accounts payable, by collating invoices, sales and payment records;
2. Aggregating information from purchase orders, invoices, sales and shipping documents, many of which may be in Japanese to prepare monthly balance sheets and other financial documents;
3. Preparing monthly balance sheets and other financial documents in Japanese and English for use by management to determine the financial condition and direction of the company;
4. Preparing and collecting all information related

to payroll, and payroll taxes, and ensuring appropriate deductions and payment of taxes;

5. Maintaining expense accounts and ensuring appropriate records of all transactions are maintained for use at the end of the quarter/year for tax and other purposes;
6. The incumbent must be fluent in reading and writing English and Japanese[.]

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. For example, the petitioner states that the beneficiary will balance sales and accounts receivable and payable; collate invoices, sales, and payment records; aggregate information from various invoices, sales and shipping documents; prepare monthly balance sheets and other financial documents; perform the payroll function; and maintain expense accounts. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 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. . . . 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. . . . In large offices and accounting offices, accounting clerks have specialized tasks. . . . Entry-level accounting clerks post details of transactions, total accounts and compute interest charges. . . . 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. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They also may review invoices and statements to ensure that all information is accurate and complete, and reconcile computer reports with operating reports.

Financial clerks keep track of money. They record all amounts coming into or leaving an organization. . . .

Without more detailed information as to the nature and complexity of the duties associated with the offered position, they appear to fall within the scope of those duties detailed in the *Handbook* for the positions of bookkeepers, financial clerks, accounting clerks and auditing clerks.

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's 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 bachelor's 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 those 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.