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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



JUL 31 2003

File: EAC 02 050 50021 Office: Vermont 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:



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

The petitioner is a New York corporation that operates an apparel and accessory merchandising company. It has three employees and a gross annual income of approximately \$2,000,000. 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. From that determination, counsel submitted a timely appeal asserting that the proffered 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. In support of her assertions, counsel provides a position evaluation from Dr. [REDACTED] a professor in the Department of Accounting, Taxation and Business Law at the Stern School of Business of New York University, indicating that the position of "staff accountant" requires a candidate to possess at least a bachelor's degree in accounting or a related field.

The Bureau does not simply rely on a position's title, however, 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. The position evaluation is

not binding on the Bureau and is advisory in nature. *Matter of Caron International*, 19 I&N Dec. 791 (Comm., 1988). It appears from the evaluation itself that the author simply listed the job duties as detailed by the petitioner in its submission to the Bureau and made a determination based upon the listed duties. It is not clear whether the evaluation's author actually observed or interviewed the beneficiary to determine specifically what tasks the beneficiary performs in the course and scope of her employment.

Counsel submitted a brief on appeal setting forth the following job responsibilities for the beneficiary:

1. Maintains and records daily accounting information for clients and prepare[s] reports;
2. Prepares unit-cost information reports, progress reports, and other such document[s], and plans and collects information and determines cost data of each business service activity within the scope of the industry and company itself;
3. Analyzes data obtained and records results, using computer;
4. Analyzes changes in services implementation, methods or services provided, to determine effects on costs;
5. Provides management with reports specifying and comparing factors affecting prices and profitability of products and services as well as preparing financial statements and operating reports;
6. Develops and installs computer-based accounting system and reconciles accounts with bank statements and research any reconciliation discrepancies and report findings;
7. Maintains an accounts receivable and accounts payable records [sic];
8. Specializes in analyzing cost relating to transfer of products; conducts and oversees inventory of equipment and supplies; and
9. Specializes in appraisal and evaluation of products.

The majority of the responsibilities listed by counsel appear to be a restatement of previous responsibilities listed with the filing

of the I-129 petition, or in response to the director's request for additional evidence. Any new responsibilities listed by counsel, for example, a requirement for the beneficiary to develop and install a computer based accounting system, will not be considered. The petitioner must establish that the position offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248,249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Neither counsel nor the petitioner may now change the title of the position or duties associated with it while the petition is pending.

The duties of employment tendered with the filing of the initial I-129 were as follows:

Conduct studies which provide detailed cost information not supplied by general accounting systems. Plans study and collects information, determining cost data of business activity within the company. Analyze data obtained and records results, changes in service implementation, methods, or services provided, determining effects on costs. Prepare reports specifying factors affecting prices and profitability. Analyze costs relating to transfer of products: Specializes in appraisal and evaluation of products.

No further explanation of the associated duties was offered at the time of filing.

The Bureau then requested additional evidence asking the petitioner to provide a detailed articulation of the beneficiary's proposed duties and responsibilities. In response to that request, the petitioner listed the following responsibilities:

#### Overall Description

The incumbent performs general accounting work. Work involves performing detailed assignments in recording, classifying, examining and analyzing financial records, documents and reports. Work conducted independently to achieve overall goals and objectives. Assignments are reviewed periodically and approved by proprietor.

#### Specific Duties

1. Classifies, codes, posts and balances financial accounting documents and records.
2. Prepares unit-cost information, progress, or other reports.

3. Prepares financial statements or assists in preparing more difficult financial statements and operating reports.
4. Prepares weekly payroll and prepare quarterly reports.
5. Prepares invoices for cash receipts.
6. Reconciles accounts and bank statements.
7. Researches reconciliation discrepancies and report findings.
8. Maintains accounts payable/receivable records.
9. May conduct or oversee an annual inventory of equipment and supplies.
10. Performs related work as assigned.

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 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 . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.

. . . .

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete . . .

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

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties.

The duties associated with the offered position fall within the scope of a financial clerk's duties. 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.* 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 established by credible evidence 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. The petitioner's president made this assertion, but did not establish the fact through corroborating evidence as requested by the Bureau. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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 description submitted by the petitioner could easily fit the description of a bookkeeper, financial or accounting clerk. The evidence submitted by the petitioner simply lacks sufficient detail to establish the nature and complexity of the beneficiary's job responsibilities. According to the *Handbook*, the usual educational requirements for bookkeepers, financial or accounting clerks 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 fact that the beneficiary possesses the equivalent of a bachelor's degree in business administration and management does not qualify the offered position as a specialty occupation.

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.