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

DA

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



File: LIN 02 009 50313

Office: NEBRASKA SERVICE CENTER

Date: **JUN 18 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:



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 is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a restaurant and deli with ten employees and an approximate gross annual income of \$700,000. It seeks to employ the beneficiary as an accountant for a three-year period. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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 because the duties described by the petitioner appeared to relate to the job of a bookkeeper or an accounting clerk. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks.

On appeal, counsel asserts that the position is that of an accountant, an occupation that normally requires a baccalaureate degree in the specific specialty of accounting.

Counsel's statement on appeal is not persuasive. When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be expected to analyze the financial information relevant to the operation and growth of our business and prepare financial reports. He will prepare and maintain the general ledger accounts. He will keep track and document all business transactions. He will analyze all the available financial information by keeping a detailed record of our assets, liabilities, and capital. He will prepare profit and loss statements and other reports to summarize our current and projected financial position. He will aid in all audits and will evaluate contracts, orders, vouchers and other transactions. He will perform all accounting and bookkeeping tasks.

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 beneficiary is a "management accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its *Occupational Outlook Handbook*, 2002-2003 edition, at page 21, the Department of Labor ("DOL") describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - records and analyze the financial information for the companies for which they work. . . . Usually, management accountants are part of executive teams involved in strategic planning or new-product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which is a restaurant and deli, employs approximately ten persons and has a gross annual income of \$700,000. The business in which the beneficiary is to be employed does not require the services of a management accountant who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

The duties that the petitioner endeavors to have the beneficiary perform are the payroll and financial transaction reporting duties that are similar to the duties a bookkeeper or accounting clerk would execute in a small business establishment. In contrast to the description of an accountant,

the DOL describes the positions of a bookkeeper and accounting clerk at page 390 of the *Handbook* as follows:

In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. . . . 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.

The duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping or accounting clerk position rather than those of a management accounting position. For example, the petitioner states that the beneficiary will "prepare entries to accounts, such as general ledger accounts," "keep track and document all business transactions," and "prepare profit and loss statements and other reports." Bookkeeping and the preparation of financial reports and profit and loss statements are not duties normally associated with a corporate accountant position. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty 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 individual with baccalaureate or higher degrees in accounting or a related field 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 a baccalaureate degree 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 degree in a specific specialty.

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 or accounting clerk, rather than an accountant. According to the DOL at page 391 of the *Handbook*, the usual requirement for a bookkeeping or accounting clerk position 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. Accordingly, it is concluded 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.

ORDER: The appeal is dismissed.