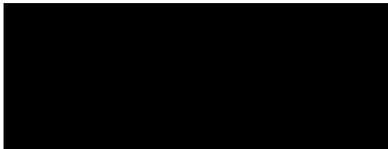


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



File: WAC 01 166 52873 Office: California Service Center

Date: MAY 23 2003

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 California company that provides recruitment, placement and consulting services for a variety of clients. It has 10 employees and a gross annual income of \$1,000,000. The petitioner seeks to employ the beneficiary as a staff accountant for a period of three years. The director determined that the petitioner failed to establish that the proffered position was a specialty occupation and that contracts existed between the petitioner and any client of the petitioner for the employment of beneficiary. The director further concluded that the petitioner failed to submit to the Bureau sufficient documentation to permit a determination as to whether the petitioner had complied with the terms of its labor condition application.

On appeal counsel asserts that the position of staff accountant is a specialty occupation. Counsel further asserts that previous determinations by the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Service (the Bureau), held that the offered position was 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.

The first issue to be considered is counsel's assertion that the offered position is a H-1B specialty occupation because the

Bureau has previously approved petitions for workers with the same job description. In support of this assertion counsel lists three applicants, all unrelated to this proceeding, who were granted H1-B classification by the California Service Center.

The Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. The record contains no documentation concerning these three individuals, their job qualifications or any position offered to them. It is, therefore, not possible to determine whether the petitions were 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).

Counsel further asserts on appeal that the position of "staff 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 correspondence dated February 15, 2001 the petitioner made an offer of employment to the beneficiary detailing the duties of the offered position as:

You will assist the company controller with general and cost accounting, inventory control, financial reporting, collection and private consulting needs to the company's clients. You will also perform general staff accountant work, following, but not limited to: processing, verifying, reconciling vendor statements to accounts payable or receivable records, assist[ing] on the audit of the entries made on various accounts of clients, [and] assist[ing] the controller on a need basis on the [sic] special projects.

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 "assist the controller with general and cost accounting, inventory control, financial reporting, collection ... general staff accountant work, following, but not limited to processing, verifying, reconciling vendor statements to accounts payable or receivable records . . . ". 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 . . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . 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 . . . . [and] bill and account collectors . . . .

The duties associated with the offered position 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 associates 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 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 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.

It should be further noted that the director requested from the petitioner copies of contracts entered into between the petitioner and companies for whom the beneficiary would be providing services, as well as an itinerary of anticipated employment. The petitioner failed to supply sufficient documentation pursuant to that request to establish that it has pending contracts with clients who would avail themselves of beneficiary's services. It is, therefore, impossible to determine that the beneficiary would enter the country for the purpose of engaging in a specialty occupation even if the position in question had been determined to constitute a specialty occupation. The lack of documentation would also render it impossible to ascertain whether or not petitioner was in compliance with the terms of its labor condition application.

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.