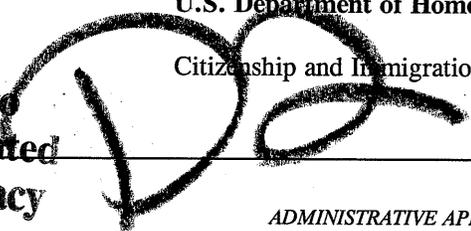


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U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, DC 20536



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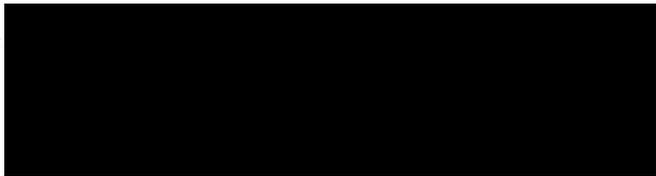
File: LIN 02 029 54866 Office: NEBRASKA SERVICE CENTER Date:

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)(1)(b)

ON BEHALF OF PETITIONER:



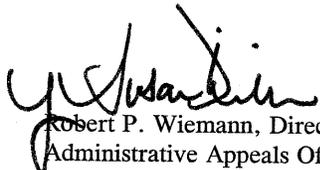
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 on appeal. The appeal will be dismissed.

The petitioner is a travel agency with twelve employees and an approximate gross annual income of \$25,000,000. 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, copies of H-1B approvals for other individuals in other branches of the petitioner's business, copies of credentials for other individuals in other branches of the petitioner's business, copies of sections of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a job posting for an accountant position with an airline, and a letter from another travel agency stating that its accountants hold bachelor's degrees.

The term "specialty occupation" is 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.

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 director denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper or 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 states that the duties of the offered position are more sophisticated than the duties of a bookkeeper or accounting clerk. Counsel asserts that the proffered position correlates to the *Handbook's* description of an accountant, hence the position is a specialty occupation.

Counsel's statement on appeal is not persuasive. Citizenship and Immigration Services (CIS) does not use a title, by itself, 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 CIS considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Analyze financial information and prepare financial reports[;]
- Compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, and documenting business transactions[;]
- Analyze financial information detailing assets, liabilities, and capital[;]
- Prepare balance sheets, profit and loss statement [sic] and other reports to summarize current and projected company financial position[;]
- Audit contracts, orders and vouchers[;]
- Prepare reports to substantiate individual transactions prior to settlement[;]
- Establish, modify, document, and coordinate implementation of accounting and accounting control procedures[;]
- Maintain budgeting systems which provide control of expenditures made to carry out activities, such as advertising, maintenance and marketing[;]
- Document revenues and expenditures expected and submit to management[;]
- Advise management on matters such as effective use of resources and assumptions underlying budget forecasts; [and]
- Provide management with reports specifying and comparing factors affecting prices and profitability of services[.]

In addition, [the beneficiary] will be responsible for

monitoring the financial transaction [sic] with a select number of dealers. He [sic] will also be responsible for maintaining ledger accounts in connection with each of the dealers, prepare monthly closing statements, analyze accounts and provide explanation to the dealers' queries regarding the closing balance or any other financial accounting issues.

The beneficiary will also monitor financial reporting process and conduct internal audit, audit of the internal control system to remove the inefficiencies if any if [sic] the dealer reporting process. This involves identifying the segments of the process that are able to be subjected to internal audits, establishing a time frame for the entire process and conducting the audits as per the time frame established.

The petitioner has not met any of the requirements to classify the offered position as a specialty occupation. First, CIS does not agree with counsel's assertion that the position is that of accountant, an occupation that would normally require a bachelor's degree in accounting or a related field. The *Handbook* 2002-2003 edition, at page 20 describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. . . . They are usually 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 in the travel and tourism business, employs approximately twelve persons and, according to its 2001 tax return, showed a gross annual profit of \$1,356.336. The business in which the beneficiary is to be employed does not appear to require the services of a corporate 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 primarily reporting and record-keeping duties, which are similar to the duties that a bookkeeper or accounting clerk

would execute in a small business establishment. In contrast to the description of an accountant, page 390 of the *Handbook* describes the positions of a bookkeeper and accounting clerk as follows:

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 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 types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping or accounting clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary will "compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, and documenting business transactions" and "audit contracts, orders and vouchers." Bookkeeping, routine accounts receivable and payable transactions, and auditing vouchers are not duties normally associated with a corporate accountant. Inasmuch as the *Handbook* indicates that a high school diploma is sufficient for most bookkeeping and financial clerk positions, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner submitted documentation that two other employees in the petitioner's office and in another branch of the same company have the equivalent of a U.S. baccalaureate degree, it has not shown that those other individuals perform duties similar to those of the offered position. The credentials of the other two employees, in and of themselves, do not constitute evidence that the petitioner has required the services of individuals with baccalaureate or higher degrees in a specific specialty such as accounting for the offered position. Third, the submitted job posting from American Trans Air does not constitute 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 baccalaureate degrees 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 or higher degree.

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 *Handbook* at page 387, the usual requirement for a bookkeeping or accounting clerk 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 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.

ORDER: The appeal is dismissed.