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

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

NOV 12 2003

File: WAC 01 229 50797

Office: CALIFORNIA 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:

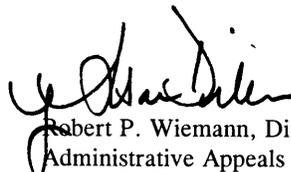
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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 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 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that provides financial and accounting services. It has two employees and a gross annual income of approximately \$100,000. The petitioner seeks to employ the beneficiary as an accountant for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel asserts that the proffered position is a specialty occupation, and that a baccalaureate degree is the minimum requirement for entry into the position.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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. The AAO 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 AAO considers. The duties of the proffered position were detailed as follows with the filing of the I-129 petition:

- Gathering and analyzing financial information necessary to prepare entries to accounting records, such as general ledgers and subsidiary ledgers[;]
- Preparing monthly reports, such as profit and lost statement, balance sheet, cash flow statement, financial budget forecasts;
- Analysis and reconciliation of financial balances and bank accounts;
- Auditing contracts and transactions, such as sales and purchase orders; [and]
- Reviewing compliance with regular tax payments and remittances.

Subsequent to the filing of the I-129 petition, the director requested additional evidence. Specifically, the director asked the petitioner to provide: a job offer letter; a detailed job description setting forth the per centage of time to be spent on particular duties; a statement explaining the level of the position's responsibility; a listing of the hours to be worked; a statement as to the types of employees to be supervised; the minimum education necessary for performance of the job duties; a position announcement; evidence that the proffered position qualifies as a specialty occupation; a list of applicants for the proffered position; a list of current employees; a copy of the beneficiary's resume; employment letters from the beneficiary's prior employers setting forth the beneficiary's job experience; copies of the beneficiary's school transcripts; and copies of the petitioner's current tax returns.

In response to that request, the petitioner responded that it was a full service accounting, financial and tax planning company, and that it required an accountant with a university level education because of the nature of the duties to be performed. The petitioner then provided the following job description:

The Accountant's duties entail:

- Gathering and analyzing financial information necessary to prepare entries to accounting records, such as general and subsidiary ledgers, documents service, detail assets, liabilities and capital, pre-current and projected company financial position. These entail 30% of the Accountant's duties[;]
- Audit and prepare monthly reports, such as profit and loss statements, balance sheets, cash flow statements, financial budget and forecasts. These duties account for 25% of the individual's time[;]
- Analysis and reconciliation of financial balances and bank accounts, as well as contract and transaction auditing, such as sales and purchase orders. These require 25% of the accountant's time[;] [and]
- Review compliance with regular tax payments and remittances. This makes up 20% of the accountant's work.

This will be a full time position of 40 hours per week. The accountant will not be supervising any employees and will be working under my supervision.

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 description tendered by the petitioner lacks sufficient detail to establish the complexity of the duties to be performed. It is not possible to determine from the description that the position requires the theoretical and practical application of a body of highly specialized knowledge. 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, those duties 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 *Handbook* 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 failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner failed 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.

Third, the petitioner states that it normally requires a degree or its equivalent for the proffered position. In support of that assertion, the petitioner listed a "borrowed" employee that had a bachelor of science degree in Management, a temporary employee that possessed a BS in Business Administration, and a full time employee holding a BS in Commerce. There was no documentation submitted, however, corroborating the work histories or educational backgrounds of those employees. The petitioner's unsupported assertion can be given little weight. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Assuming, however, that the petitioner has always required a bachelor's degree, or its equivalent, for the offered position, the proffered position still fails to qualify as a specialty occupation because the position does not require the theoretical and practical application of a body of highly specialized knowledge. Cf. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Finally, the petitioner failed to 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. 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.