

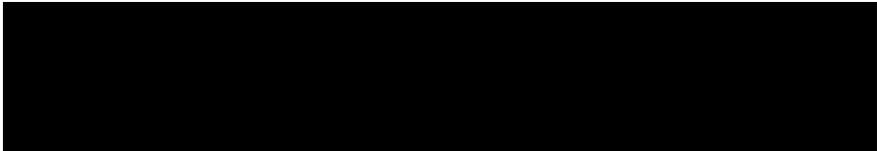
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



NOV 24 2003

File: LIN 02 075 50377 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: SELF-REPRESENTED

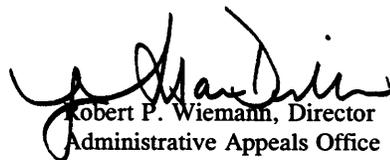
INSTRUCTIONS:

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 rehabilitation services and staffing business with 60 employees and an approximate gross annual income of \$1,663,179. 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.

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 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 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 in 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.

In the initial I-129 petition, received at the Service Center on January 2, 2002, the petitioner described the duties of the offered position as follows: "Prepares financial statements, bank reconciliation, billing etc. for internal use and government reporting for a specified accounting periods." [sic]

On February 27, 2002, the director requested, among other documents, further evidence that the proffered position was a specialty occupation. In response, the petitioner elaborated on the job duties as follows:

- Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions.
- Compiles composite reports from individual reports of subordinates required by management or government agencies.
- Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position.
- Verifies contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement.
- Establishes, modifies, documents, and coordinates implementation of accounting principles and accounting control procedures.
- Devises and implements system for general accounting.
- Determines work procedures, prepares work schedules, and expedites workflow.
- Conducts survey of operations to ascertain needs of the company.
- Sets up classification of accounts and organizes accounting

procedures and machine methods support.

- Devises forms and prepares manuals required to guide activities of bookkeeping and clerical personnel who post data and keep records.
- Adapts conventional accounting and record keeping functions to machine accounting processes.

The petitioner also included two job postings in the response to the director's request for evidence.

The director denied the petition on June 26, 2002 because the duties described by the petitioner appeared to relate to the job of a bookkeeper or an accounting clerk, which would not require a baccalaureate degree in a specific specialty as a minimum entry requirement.

On appeal, the petitioner states that the duties of the offered position are more sophisticated than the duties of a bookkeeper or accounting clerk. The petitioner asserts that the described position is that of an accountant, which is a specialty occupation in that it requires a bachelor's degree in accounting or a related field as a minimum requirement.

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.

CIS does not agree with the petitioner's assertion that the position is that of an accountant. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. 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.

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 financial transaction reporting and monitoring 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, at page 390 of the *Handbook*, the DOL 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. Bookkeeping, the auditing of vouchers, and routine accounts receivable and payable transactions are not duties normally associated with a corporate accountant.

According to the DOL at page 387 of *Handbook*, 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. 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.

In addition, the submitted job postings do 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 parallel positions. Furthermore, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as accounting, for the offered position. 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. 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.