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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 I Street, N.W.
Washington, DC 20536



FILE: WAC-01-268-53428 OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 14 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)

IN BEHALF OF PETITIONER:



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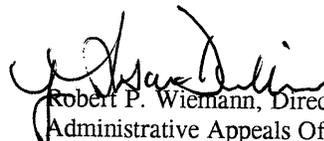
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a garment manufacturer that employs five persons and has a gross annual income of \$4 million. It seeks to employ the beneficiary as an accountant. The director denied the petition because the petitioner had not demonstrated that the offered position is a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states that the position qualifies as a specialty occupation. Further, counsel maintains that a petitioner in an unrelated proceeding had submitted to the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), an H-1B nonimmigrant visa petition for the beneficiary which CIS approved.

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 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 petitioner's initial I-129 described the position of accountant as follows:

- [1.] [A]nalyzing and examining financial information, detailing assets, liabilities and capital; preparation of financial reports and documents such as balance sheets, profit and loss statements (on quarterly and yearly basis), fund flow and cash flow statements to summarize current and projected company financial position;
- [2.] [E]xamination of financial documents for accuracy and verifying them with books of entries;
- [3.] [D]rawing financial balances and making reports of account status; monitoring accounts receivables and payables;
- [4.] [R]esponsibility for preparation of payrolls, withholding and payment of taxes and bank reconciliation; [and,]
- [5.] [I]nterpretation of accounts and records to management, as well as assisting management in tax and financial planning and budgeting; coordination of all bookkeeping and billing activities.

On November 23, 2001, the director requested additional information from the petitioner: a detailed description of the work done; the

percentage of time to be spent on each duty; the level of responsibility; hours per week of work; types of employees supervised; and the minimum education, training, and experience necessary to do the job. Further, the director requested evidence that would show the petitioner satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and that the petitioner's documents pertained to the beneficiary.

In response, the petitioner submitted a letter and documentary evidence about the beneficiary's name. The letter described the offered position, and the time required to perform its duties were stated as follows: 20% of work day to group one, 20% to group two, 15% to group three, 20% to group four, and 25% to group five. In the letter, the petitioner emphasized that the Department of Labor's *Occupational Outlook Handbook (the Handbook)* described the position of accountant as a professional and specialty occupation. The letter also maintained that the petitioner had met at least three of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On March 13, 2002, the director denied the petition finding that the petitioner failed to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the duties of the offered position were financial reporting duties similar to those that a bookkeeper or accounting clerk would execute in a small business establishment. The director, citing the *Handbook*, described the positions of bookkeeper and accounting clerk as handling all financial transactions and recordkeeping such as recording all transactions, posting debits and credits, producing financial statements, preparing reports and summaries for supervisors and managers, and reconciling billing vouchers.

Next, the director stated that the petitioner had not shown a past practice of employing a person with a bachelor's degree in accounting for the offered position or that similar businesses with parallel positions also required a person with this degree. Finally, the petitioner did not show that the nature of the beneficiary's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

On April 9, 2002, counsel submitted an appeal and additional evidence. In the appeal, counsel states that the petitioner has satisfied several criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel, citing the 2002-2003 edition of the *Handbook* to describe the positions of accountant and bookkeeper, states that the duties of the offered position match those performed by an accountant. Counsel states that the beneficiary will record and analyze the financial information of the company, detailing its assets, liabilities, and capital; will examine the financial documents for accuracy and verify them with books of entries; will prepare financial reports such as balance sheets, profit and loss

statements, and fund and cash flow statements to summarize the current and projected company financial position. And, will make reports of account status, monitoring accounts receivables and payables; and will be responsible for assisting management in tax and financial planning and budgeting, and will draw financial balances and make reports of account status.

Counsel asserts that a bookkeeper's duties are simple: recording transactions, posting debits and credits, and providing reports and summaries to supervisors. Whereas, counsel maintains that the beneficiary will be responsible for analyzing and preparing financial reports, planning and budgeting, and cost accounting. Counsel states that the beneficiary's duties are more extensive and demanding than those of a bookkeeper; thus, counsel asserts, they reflect those an accountant performs.

Next, counsel asserts that the position of accountant normally requires a bachelor's degree or its equivalent and this requirement is common to all industries. Counsel states that the position of accountant under the *Dictionary of Occupational Titles (DOT)* has an SVP of 8, translating to over four years and up to ten years of vocational preparation, and DOL's *Handbook* states that an accountant requires a bachelor's degree in accounting or a related field. Then, counsel states that businesses similar to the petitioner's also require such positions, and submits three Internet job postings to show this.

Also, counsel states that the nature of the specific duties is specialized and complex, such as preparing the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements, and the attainment of knowledge to perform such duties is associated with a bachelor's degree.

Last, counsel asserts that the instant petition should be approved because Avaco Textile, Inc. had filed a similar petition for the beneficiary and the California Service Center approved it on March 14, 2000.

Counsel's statements on appeal are not persuasive. The petitioner fails to satisfy at least one criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Each of counsel's statements is addressed below.

One of counsel's assertions is that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in The Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's (DOL) 2002-2003 edition of the *Occupational Outlook Handbook (the Handbook)* provides a more 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. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

According to the *Handbook*, the duties of the offered position are congruous with those performed by bookkeeping, accounting, auditing and financial clerks. For example, the record shows that the petitioner's accountant will prepare "payroll, withholding and payment of taxes and bank reconciliation," and "financial reports and documents such as balance sheets, profit and loss statements," will provide "examination of financial documents for accuracy and verifying them with books of entries, and will be "monitoring accounts receivables and payables," and handle "coordination of all bookkeeping and billing activities."

According to the *Handbook*, on pages 386-390, such duties encompass those performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. 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 handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account They may also review invoices and statements to ensure that all information is accurate and complete Auditing clerks verify records of transactions posted by other workers.

Financial clerks record all amounts coming into or leaving an organization keep track of a store's inventory

On page 387, the *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. Thus, the petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), showing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Another of counsel's assertions is that that degree requirement is common to the industry in parallel positions among similar organizations, and counsel submits three Internet postings to show this. However, the businesses in the Internet postings are dissimilar from the petitioner's in size, scope, and industry: one is a supermarket chain with 2,300 employees, another is a home building/construction company, and the third is a global surgical and medical device company that develops, manufactures, and markets products.

The record does not support counsel's statement that the nature of the duties is specialized and complex, requiring a bachelor's degree in accounting to "prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements." For example, the *Handbook* states bookkeeping, accounting, auditing, and financial clerks prepare tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements.

The second and final issue is counsel's statement that the instant petition should be approved because Avaco Textile, Inc. had filed a similar petition for the beneficiary and the California Service Center approved it on March 14, 2000. To support this statement, counsel submits a copy of the approval notice. This record of proceeding does not contain all of the supporting evidence submitted to the California Service Center in the prior case. In the absence of all of the corroborating evidence contained in the prior proceeding, the document submitted by counsel is not sufficient to enable the AAO to determine whether the petition was parallel to the offered position. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii).

In conclusion, the petitioner has failed to establish any of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. The petition is denied.