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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, D.C. 20536

[REDACTED]

File: LIN-02-011-52379 Office: NEBRASKA SERVICE CENTER Date: OCT 21 2003

IN RE: Petitioner:
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:

[REDACTED]

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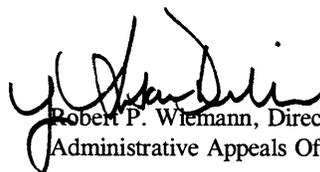
INSTRUCTIONS:

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. Wiermann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a home health agency with 30 employees and a gross annual income of \$1.5 million. It seeks to employ the beneficiary as a health services manager for a period of three years. The director determined the petitioner had not established that the proffered 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, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, which combines the duties of a general manager with those of an administrative services and facility manager. On appeal, counsel states, in part, that the proffered position more closely resembles a financial manager rather than a health services manager. Counsel further states that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* finds that a bachelor's degree in finance, accounting, economics or business administration is the minimum academic preparation for financial managers.

Counsel's statement on appeal is not persuasive. The AAO 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 the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Responsible for the planning, directing and coordination of all business services to satisfy client requirements for the home health agency service. Monitors the accounting activities of the home health agency to ensure it is within [the] framework of the policies, objectives and budgets established by top management. Participate in the business evaluations of the agency's program to ensure quality health card [sic] and other services. Apply principles of accounting to analyze business affairs including direct staff services and contractual services. Oversee personnel matters, billing and collections. Estimates [sic] future revenues and expenditures.

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 classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the beneficiary is a financial manager, an occupation that would

normally require a bachelor's degree in finance, accounting, economics, or business administration. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 52-53, the Department of Labor (DOL) describes the job of a financial manager as follows:

[O]versee the preparation of financial reports, direct investment activities, and implement cash management strategies. . . .

Areas in which financial managers play an increasingly important role involve mergers and consolidations, and global expansion and financing. . . .

The role of the financial manager, particularly in business, is changing in response to technological advances that have reduced the amount of time it takes to produce financial reports significantly. Financial managers now perform more data analysis and use it to offer senior managers how to maximize profits. They often work on teams, acting as business advisors to top management. . . .

The record reflects that the petitioner, which is a home health agency, employs 30 persons and has a gross annual income of \$1.5 million. The business in which the beneficiary is to be employed does not require the services of a financial manager who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced financial management duties such as involvement in mergers and consolidations, global expansion, and financing, or that the position requires an individual with a knowledge of sophisticated financial functions normally associated with the duties of a financial manager.

The duties that the petitioner endeavors to have the beneficiary perform are the financial transaction reporting 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:

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. . . . 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 "direct staff services and contractual services" and "[o]versee personnel matters, billing and collections. . . ." Bookkeeping and routine accounts receivable and payable transactions are not duties normally associated with a financial manager. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, 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. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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 DOL at pages 387-388 of the *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. 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.