

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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Washington, DC 20536

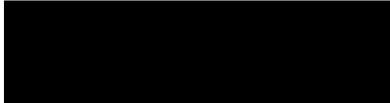


OCT 27 2003

FILE: WAC-02-025-58195 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:



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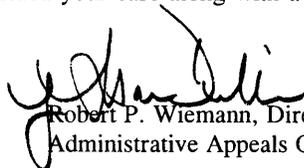
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a material and product supplier for the textile industry that employs four persons and has projected a gross annual income of \$1,000,000. It seeks to employ the beneficiary as a senior accountant. The director denied the petition because it determined the position was not a specialty occupation.

On appeal, counsel submits a brief and copies of the petitioner's Profit and Loss Statement and Statement of Income. Counsel states, in part, that the position is a specialty occupation as defined under the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A) because it requires a bachelor's degree.

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 asserts that the senior accountant position is a specialty occupation. Citizenship and Immigration Services (CIS) does not simply rely on a position's title 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. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

In its initial petition, the petitioner explained that the petitioner is a recently incorporated organization in the United States and also a subsidiary of a large Korean textile industry supply organization. The petitioner set forth the following description of duties for the proposed senior accountant position in its initial filing: "design and implement a system of accounting for the operation." Additionally, the petitioner's support letter, submitted with the initial petition, detailed the job duties to be performed by the beneficiary as follows:

Due to the complex nature of our business transactions including import and distribution, we find ourselves with an ever more complex and challenging accounting system. As we service all of our company's financial needs including billing, financial planning, budgeting and tax preparation, we require the services of an innovative accounting department which can expand and re-organize to keep pace with our organizations [sic] changing needs.

The Senior Accountant would design and implement a system of accounting for the operation. This would include staffing and training other accounting support personnel in the management office and outside services as the case may be, on such procedures as, financial planning, budgeting, billing and collections, and tax preparation.

The petitioner required a bachelor's degree in economics, accounting or business administration and accountancy experience.

Subsequent to the filing of the petition, the director requested from the petitioner a detailed description of the specific duties of the proffered position, including the percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training, and experience necessary to perform the position's duties. Additionally the director requested an explanation why the position requires the services of a person who has a college degree or its equivalent in the occupational field.

In response to this request, counsel reiterated that the petitioner requires an experienced accountant to handle the accounting aspects of its complicated import and distribution business transactions. Counsel also reiterated the petitioner's description of duties for the proffered position and provided an

excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on accountants as evidence of educational requirements for accountant positions. Counsel also referenced the DOL's *Dictionary of Occupational Titles* for an accountant position and its standard vocational preparation rating.

The director denied the petition because she determined the position to be a financial record keeping or bookkeeping position, both of which do not require a baccalaureate or higher degree or its equivalent for entry into the position according to the DOL's *Handbook*.

On appeal, counsel states that the director misinterpreted the position's duties and mischaracterized the position as a bookkeeping or financial record keeping position. Additionally, counsel raises the issue of the petitioner's size and provides financial documents to substantiate its fiscal solvency.

The position is an accountant position as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The petitioner and counsel consistently used the same description of duties: design and implementation of an accounting system; and oversight of financial planning, budgeting, billing, collections, tax preparation, and establishment of an accounting department.

The petitioner's description of duties for the position reflect the duties described for accountants in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 21-22:

Accountants and auditors help to ensure that the Nation's firms are run more efficiently, its public records kept more accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services to their clients. These services include public, management, and government accounting, as well as internal auditing. However, accountants and auditors are broadening the services they offer to include *budget analysis, financial and investment planning, information technology consulting, and limited legal services*. Beyond the fundamental tasks of the occupation—preparing, analyzing, and verifying financial documents in order to provide information to clients—many accountants now are required to possess a wide range of knowledge and skills.

*Public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their*

clients, who may be *corporations*, governments, nonprofit organizations, or individuals. . . .

*Management accountants*—also called industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include *budgeting*, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in *strategic planning* or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including *financial analysis*, *planning and budgeting*, and cost accounting.

. . . .

Accountants also are increasingly assuming the role of a personal financial advisor. They not only provide clients with accounting and tax help, but also help them develop a personal budget, manage assets and investments, plan for retirement, and recognize and reduce exposure to risks.

Many of the emphasized terms from the previous *Handbook* quotation parallel the language used by the petitioner to describe the duties of the proffered position. The petitioner's proffered position requires the beneficiary to prepare its taxes, establish an accounting system and an accounting team, assist with financial planning and budgeting, and handle billing and collections. These are typical duties and responsibilities for accountants according to the *Handbook*.

Additionally, the *Handbook* indicates that accountants establish accounting systems. On page 23, the *Handbook* states the following under the section "Job Outlook" for accountants:

The changing role of accountants and auditors also will spur job growth. In response to market demand, these financial specialists will offer more financial management and consulting services as they take on a greater advisory role and develop more sophisticated and flexible accounting systems. By focusing on analyzing operations, rather than simply providing financial data, accountants will help to boost demand for their services.

The nature of the petitioner's business is a new subsidiary of an established foreign corporation that imports and distributes textile products and materials. It would be reasonable that an entity engaged in import and distribution, especially one establishing its new entity in the United States through financial backing from a large, well-known Korean corporation, would desire to employ an internal accountant, and eventually an accounting department, to guide its complex financial operations and general accounting.

The position is not a financial record keeping or bookkeeping position. The *Handbook*, at page 390, describes these types of positions as follows:

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.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

Nothing in the descriptive terms of a financial record keeper or bookkeeper from the *Handbook* reflects the duties described by the petitioner for its proffered senior accountant position. Thus, the director erred in categorizing the position as a financial record keeper or bookkeeper.

At page 22, the *Handbook* sets forth training and educational requirements for the senior accountant position as follows: "Most accountant and internal auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook* illustrates that most accountant positions require a bachelor's degree in accounting or a related field. Thus, the petitioner has established that the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position, and the petitioner's proffered position is a specialty occupation.

On appeal, counsel raises the issues of the petitioner's size and financial solvency in response to the director's statement that

the petitioner failed to prove that it required an accountant for a firm of four employees. The petitioner's size and ability to pay a salary are irrelevant considerations in the context of determining whether or not a proffered position meets the definition of a specialty occupation and will not be discussed in this decision. See *Young China Daily v. Chappell*, 742 F.Supp. 552 (N.D. Calif. 1989). Additionally, in his response to requested evidence by the director, counsel cited the Department of Labor's *Dictionary of Occupational Titles* (DOT) as evidence that its proffered position is a specialty occupation. 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 *Occupational Outlook Handbook* (*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, 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.

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 sustained that burden.

**ORDER:** The appeal is sustained. The director's decision will be withdrawn and the petition will be approved.