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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



SEP 10 2003

File: WAC-02-099-52952

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: SELF-REPRESENTED

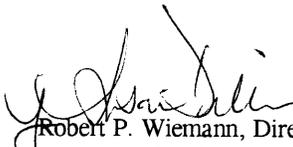
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 dismissed.

The petitioner is engaged in catering Indian food and retailing foodstuffs. It has two employees and a projected gross annual income of \$175,000. It seeks to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits additional information.

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. On appeal, the petitioner states, in part, that the proposed duties, which include applying principles of accounting to analyze financial information and prepare financial reports, are those of an accountant, a position that qualifies as a specialty occupation. The petitioner submits job announcements of similar positions to demonstrate that a baccalaureate degree is required.

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

Due to the current volume of our business and the anticipated expansion and growth thereof[,] we are in urgent need of an Accountant to organize and maintain our accounts with our customers/suppliers and to control and attend to all aspects of the financial/accounting affairs of our business. . . .

It is imperative that the accounts are maintained accurately and professionally[,] which can only be accomplished by an educated professional. . . . This individual will prepare the quarterly and yearly tax returns, payroll statements and deductions[,] monthly profit and loss reports and financial statements. [The beneficiary] will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers. [The beneficiary] will prepare balance sheets reflecting company's assets, liabilities and capital. He will perform audits and prepare reports. He will inspect our company's accounting systems to determine their efficiency and protective value. He will also prepare reports of findings and recommendations for company management. He will further attend to a financial analysis of the business's financial position both at the current time of the analysis and for the foreseeable future.

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 Bureau does not agree with counsel's assertion that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 21, the Department of Labor (DOL) describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information of the companies for which they work. . . . Usually, management accountants are 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.

The record reflects that the petitioner, which is in the catering and food retail business, employs two persons and has a projected gross annual income of \$175,000. The business in which the beneficiary is to be employed does not require the services of a corporate accountant who is part of an executive decision-making team. Furthermore, 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 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 prepare payroll statements and deductions, and prepare balance sheets. Bookkeeping, payroll, and routine accounts receivable and payable transactions are not duties normally associated with a corporate accountant. 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, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. None of the prospective employers' organizations in the advertisements is similar to the petitioning organization. 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.