

D2

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: LIN 02 276 53514 Office: NEBRASKA SERVICE CENTER

Date:

APR 21 2004

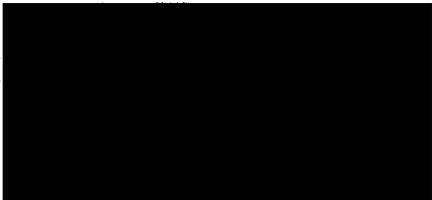
IN RE: Petitioner:  
Beneficiary:



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:

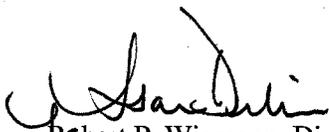
**PUBLIC COPY**



identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition 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 law practice that seeks to employ the beneficiary as a staff accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a staff accountant. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: reviewing journal entries and maintaining ledger accounts; preparing and analyzing monthly financial statements; coordinating year-end audits; consolidating five entities and inter-company accounts analysis and reconciliation; and preparing bank reconciliation and bank borrowing base reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or business administration.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to the director, the duties of the proffered position reflect those performed by bookkeeping or accounting clerks in small business establishments. As such, a candidate would not require a bachelor's degree in a specific specialty.

On appeal, the petitioner provides a more detailed job description, pages of the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), Internet postings, and newspaper advertisements. The petitioner contends that the petitioner has satisfied all criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Upon review of the record, however, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The petitioner claims that it satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the duties of the proffered position are performed by accountants, not by bookkeeping and accounting clerks. The petitioner claims its more detailed job description is nearly indistinguishable from the description in the letter accompanying the petition, and further states that no new duties are added on appeal.

The petitioner's claims are unpersuasive. With respect to the detailed job description submitted on appeal, the AAO finds that it is distinguishable from the job description submitted with the I-129 petition. For example, the job description submitted on appeal explains that the beneficiary will supervise accounting clerks to assure conformance to the Generally Accepted Accounting Principles (GAAP), and will prepare trend analysis. Neither of these duties was described in either the letter accompanying the petition or in the response to the request for evidence. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. 103.2(b)(12). On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek

approval of a petition that is not supported by the facts in the record. Consequently, the AAO will disregard the job description submitted on appeal.

On appeal, the petitioner claims that a bookkeeper or accounting clerk makes data entries by following simple instructions, and enters accounting data or journal entries that will be reviewed by an accountant at the month-end or year-end close, and that a staff accountant verifies entries to ensure GAAP compliance. The petitioner states that according to the DOL, the duties of advanced accounting and bookkeeping clerks involve totaling, balancing, and reconciling billing vouchers; ensuring accuracy of data on accounts; and coding documents according to company procedures. The petitioner, moreover, states that accounting and bookkeeping clerks do not possess the requisite academic knowledge and professional experience to perform the proffered position's duties.

As explained in the denial letter, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO finds that the director correctly determined that the duties of the proffered position resemble those of financial clerks, particularly bookkeeping, accounting, auditing, and financial clerks. In its response to the request for evidence, the petitioner stated that for one week each month the beneficiary would review journal entries and maintain general ledgers and "prepare and analyze monthly financial statements"; for two weeks each month would summarize and present monthly financial operating results to the corporate controller; for one week each month would prepare bank reconciliation and bank borrowing base reports; and finally, for the months of April and May, would coordinate the year-end audits. In essence, the beneficiary's duties correspond to those of bookkeeping, accounting, auditing, and financial clerks. According to the *Handbook*:

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 . . . .

The duties of bookkeeping, accounting, auditing, and financial clerks entail maintaining one or more accounting records; producing financial statements; reconciling billing vouchers; and preparing reports and summaries for managers. These duties involve the same level of responsibility, and are very similar, as

those of the proffered position. Thus, the AAO finds without merit the petitioner's claim that financial clerks lack academic knowledge and professional experience to perform the duties of the proffered position

The *Handbook* indicates 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 at 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.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits Internet postings and newspaper advertisements.

The petitioner's evidence, nonetheless, is insufficient to establish the second criterion. The Internet postings from Phonak, Inc. and Blackman Kallick Bartelstein LLP lack specificity to determine whether the organizations are similar to the petitioning entity. Conversely, postings from Ajilon Finance, PotBelly Sandwich, Administaff, Westfordgroup, Forefrontstaffing, and Steiner Electric Co. reveal that the petitioner is a dissimilar organization in size, scope, and nature. With the advertisements, one advertisement does not require a bachelor's degree in accounting. CFM Harris Systems' advertisement seems to describe the requisite commonality to the petitioner. Yet, one advertisement does not establish an industry-wide bachelor's degree requirement. Thus, the petitioner fails to satisfy the second criterion.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Likewise, no evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. As previously related, the duties of the proffered position are performed by bookkeeping, accounting, auditing, and financial clerks; the *Handbook* explicitly states that a bachelor's degree is not required for bookkeeping, accounting, auditing, and financial clerks. Consequently, the petitioner fails to establish the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.