

PUBLIC COPY

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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



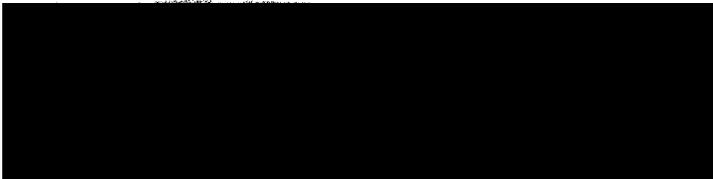
FILE: EAC 03 032 52338 Office: VERMONT SERVICE CENTER Date: APR 28 2004

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:



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 service center director 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 Methodist church and seeks to employ the beneficiary as an accounting clerk. The petitioner 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 information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 proceedings 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accounting clerk. Evidence of the beneficiary's duties includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: record the petitioner's financial business transactions and maintain all accounting records; post, verify, and reconcile accounts payable, accounts receivable, expenses, payroll or other ledger accounts; prepare statements, invoices, and vouchers; submit reports of business financial operations; provide administrative support to the church administrator or pastor; operate an efficient plan of financial record keeping and reporting; develop bookkeeping procedures; prepare financial information for the financial management team and pastor; attend monthly financial management team meetings; input tithe and offering data into Servant Keeper software and generate financial reports from that data utilizing Microsoft Excel; input accounts payable data into the accounting system after approval; prepare checks as directed by the pastor; prepare all material for mailing checks, ensuring that appropriate copies are maintained and filed; work with the pastor to ensure that bills are paid on time; work with the Ministry of Trustees in preparing an annual budget of maintenance and equipment needs; schedule vendor appointments; supervise workers in the maintenance and repair of all physical properties; establish and implement cleaning, painting, and renovating schedules; assist the Ministry of Trustees in its relationships with architects, contractors, and others in building, remodeling, and equipping church buildings; attend Board of Trustees team meetings; prepare personnel information for the Pastor Parish Relations Ministry Team; maintain records on church staff personnel; establish and maintain records of equipment and facilities; handle payroll including verifying timesheets; distribute payroll checks; serve as a resource person regarding financial and business matters of the church; serve as the church purchasing agent; approve and process requisitions and purchase orders; handle reception duties including telephone answering; perform incidental statistical work in the compilation of reports involving the administrative activities of the designated area; assist the pastor and staff with special projects as instructed; maintain inventory of office supplies; work with the church administrator and secretary in handling general administrative duties; and other office duties as required. The petitioner requires a bachelor's degree, with the major area of concentration being in accounting for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for bookkeepers, accounting or financial clerks. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 387-390, the Department of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. 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 . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.

....

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

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

....

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties.

The *Handbook* notes that the majority of financial clerk positions require at least a high school diploma, but some college is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. *Id.* at 387. Thus, the petitioner has failed to establish that a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The job description provided by the petitioner does not indicate that the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). In support of these assertions, the petitioner submitted an opinion from [REDACTED], an Associate Professor at Frostburg State University. Mr. [REDACTED] opined that the minimum requirement for entry into the offered position is a bachelor's degree in accounting because of the complexity of the position's duties, and because the beneficiary works independently without on-site supervision. The AAO disagrees. The duties related to accounting functions are routinely performed by accounting/financial clerks and bookkeepers. The performance of those duties does not require the theoretical and practical application of a body of highly specialized knowledge as noted by the educational requirements in the *Handbook*. Likewise, the remaining duties listed for the offered position involve general administrative or managerial functions that do not normally require a minimum of a bachelors' degree in a specific specialty for their performance.

Finally, the petitioner has not established that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Assuming arguendo that this were the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly

specialized knowledge. *Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.