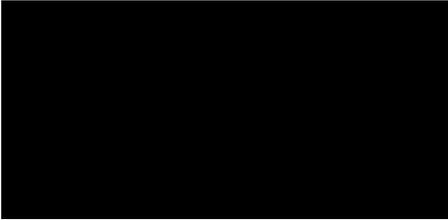




U.S. Citizenship
and Immigration
Services

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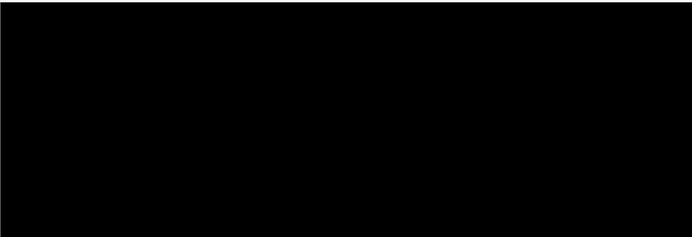


FILE: WAC 03 004 50715 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted] *11/09/2003*
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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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**Identifying data deleted to
prevent clearly unwarranted
invasion of privacy**

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 an employment agency that seeks to employ the beneficiary as a financial manager. 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 states that the proffered position 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.

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 part-time financial manager. Evidence of the beneficiary's duties includes, in part: the Form I-129; the petitioner's September 30, 2002 letter, the attachments 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: overseeing cash flow and financial instruments associated with cost management, budgeting, and risk management; preparing financial reports and assisting the company in budgeting, cost management, and performance evaluation; and developing and implementing financial and economic policies to assess the company's present and future financial status. The petitioner stated that a candidate must possess a bachelor's degree in business administration, economics, or a related field.

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). The director stated that the job description in the initial petition differed significantly from the description in counsel's response to the request for evidence, and mentioned that the job duties described by counsel were very general and that no evidence supported them. According to the director, there must be credible and reasonable offer of employment that is consistent with the petitioning organization's needs. This can be shown, the director explained, by demonstrating that the job duties are normal and customary in similar organizations in the petitioner's industry. The director stated that the petitioner did not present any evidence demonstrating this. Finally, the director stated that the petitioner did not present specific, credible evidence showing that its organization has unique and specific needs for the services of a financial manager. Consequently, the director found that no bona fide specialty occupation existed.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel refers to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) and the *Occupational Information Network* (*O*NET*) to state that the proffered position's duties resemble those of an accountant, a position that requires a bachelor's degree. Counsel submits copies of job postings to evince that the degree requirement is common in the industry in similar organizations. This is a newly created position according to counsel. Counsel maintains that cases have shown that the size of the petitioning entity and its past hiring practices are not relevant in determining whether a position qualifies as a specialty occupation. Counsel contends that it is the duties of the position that matter. According to counsel, no case states that an organization needs to present a unique need for the position. Counsel asserts that the duties in the two descriptions do not differ; the petitioner merely amplified the duties in response to the request for evidence. Finally, counsel contends that the offered position is bona fide and that the petitioner has a need for the proffered position because of the increasing complexity of its accounts and its expansion plans. Counsel states that the petitioner relies on a large number of small accounts and provides its own supplies, materials, and manpower for assignments.

Upon review of the record, 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.

The petitioner described the duties of the proffered position in the September 30, 2002 letter. Counsel described the expanded job description in the April 15, 2003 letter submitted in response to the request for evidence. The AAO will disregard the latter description because the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

With this in mind, the AAO will now consider 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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel refers to the *Handbook* and the *O*NET* to state that the proffered position's duties resemble those of an accountant, a position that requires a bachelor's degree in accounting.

This claim is weak. In the first place, the *O*NET* provides 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 *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within that occupation.

Next, in determining whether a position qualifies as a specialty occupation, 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.

A careful review of the *Handbook* discloses that, although the duties of the proffered position somewhat resemble those of an accountant, many of the duties are absent. According to the *Handbook*, specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The appropriate category for the proffered position is the field of management. The *Handbook* states:

Management accountants—also called cost, managerial, 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 nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities.

Unlike a management accountant, the beneficiary will not be part of an executive team involved in strategic planning or new-product development. Nor will the beneficiary prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The *Handbook* further states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

Counsel likens the proffered position to an accountant. The record shows that the petitioner is an employment agency, employs three persons, and earns a gross annual income of under \$200,000. Given this context, it is very unlikely that the petitioner would require the services of a part-time financial manager who performs accountant duties. As the *Handbook* shows, many accountants and auditors worked for accounting, tax preparation, bookkeeping, and payroll services firms or were self-employed. Although counsel relies on cases to state that the size of the petitioning entity and its past hiring practices are not relevant in determining whether a position qualifies as a specialty occupation, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of only \$200,000 differs vastly from responsibility associated with a far larger income or for a firm that is responsible for the accounting work of many clients. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into this particular position.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings.

This evidence is insufficient in establishing the second criterion. The resume from Stan has nothing to do with showing that a degree requirement is common to the industry in parallel positions among similar organizations; thus, it is not relevant in this proceeding. The other postings are organizations that are dissimilar to the petitioning entity, an employment agency with three employees. The State of New Hampshire seeks a chief accountant; a CPA firm, Sharkey Piccirillo, LLP, seeks a staff accountant; and the

University of Southern California seeks an accountant I. Thus, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

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.

There is no evidence in the record to establish 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. According to counsel, the duties of the proffered position are complex, requiring a candidate holding a bachelor's degree.

As previously discussed, it is very unlikely that the petitioning entity, an employment agency with three employees, would require the services of a part-time financial manager who performs accountant duties. As the *Handbook* shows, many accountants and auditors worked for accounting, tax preparation, bookkeeping, and payroll services firms or were self-employed.

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.