



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 186 53005 Office: NEBRASKA SERVICE CENTER Date: **AUG 03 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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protect clearly unwarranted
invasion of personal 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 a transporter of goods that seeks to employ the beneficiary as an 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 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 an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the May 21, 2003 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 generating monthly business reports of accounts and financial statements; setting up accounts for clients; overseeing verification and approval of invoices and ensuring accuracy in expenses; ensuring accurate registration expensing; compiling and analyzing financial records to prepare account entries and advise management; conducting an examination of financial reports, including a study and evaluation of internal controls, testing of the accounting records, and verification by an independent third-party; and analyzing balance sheets and profit and loss statements to summarize the current and projected financial position of individuals and companies in order to determine whether to continue to do business with them. The petitioner stated that the beneficiary is qualified for the position; she has worked in the shipping industry and understands the Asian market and holds a bachelor of science degree in economics and an administrative office diploma. In addition, she has a license for E-Driver's Shipping and European computer driving.

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 petitioner's business would not require the services of an accountant as described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). No evidence showed, the director claimed, that the position involves complex or advanced accounting duties such as preparing detailed financial reports for outside agencies or corporate stockholders or that the position requires an individual with knowledge of sophisticated accounting techniques normally associated with the duties of an accountant. The director mentioned that he would consider the expert opinion evaluation, though it is merely advisory. According to the director, the *Handbook* revealed that the duties of the position reflect those performed by bookkeeping, accounting, or auditing clerks in a small establishment, positions that do not require a bachelor's degree.

On appeal, counsel states that the proffered position qualifies as a specialty occupation and claims that the director mischaracterizes the proffered position. According to counsel, the petitioner is medium-sized, is the largest refrigerated carrier in northern Michigan, and has experienced fast growth since 1996. Its gross annual revenue is \$7 million and it has over 130 pieces of heavy equipment and 57 employees. The petitioner's goal, counsel contends, is to expand its services to overseas customers. Citing the description of an accountant in the *Dictionary of Occupational Titles (DOT)*, counsel claims that an accountant is a professional position based on its SVP rating of 8. Furthermore, counsel claims that the duties of the proffered position align with the *DOT's* description of an accountant. An evaluation by [REDACTED], Assistant Professor of Accounting at the School of Management, State University of New York at Buffalo, New York, is relied on by counsel. Counsel claims that the evaluation stated that the skill required to analyze financial records, generate account statements, and report financial issues to management are taught in courses of accounting, finance, and business administration. These courses and skills, counsel claims, are taught in a bachelor's degree program.

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 AAO first 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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 asserts that the proffered position is a specialty occupation because of its SVP rating in the *DOT*. 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 DOL 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 *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 the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific SVP rating.

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 duties of the offered position are more aligned with those performed by bookkeeping, accounting, auditing, and financial clerks than with the duties performed by an accountant. The record shows that the beneficiary will generate monthly business reports of accounts and financial statements; set up accounts; "[o]versee verification and approval of specified vessels invoices"; "analyze financial records"; prepare the "balance sheet and [p]rofit and [l]oss statement"; "prepare entries to accounts"; and generate monthly business reports of accounts." According to the *Handbook*, these duties encompass those performed by bookkeeping, accounting, auditing, and financial clerks:

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 *Handbook* states 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 fails to establish the first criterion by proving that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

The director concluded correctly that the petitioner's business would not require the services of an accountant as described in the *Handbook*. Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Few of the accountant duties described in the *Handbook* apply to the proffered position. Accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in budgeting, performance evaluation, cost management, and asset management. With this significant dissimilarity, the proffered position's level of responsibility is lower than an accountant. Consequently, a bachelor's degree in accounting or a related field which the DOL states is required for a management accountant, would not be required for the proffered position.

██████████ opinion about the degree requirement is relevant, though he did not provide independent evidence to substantiate his opinion that the proffered position's duties require a bachelor's degree in accounting or a related field. ██████████ stated that his opinion is based on the assistant professor of accounting positions that he holds or held at the State University of New York at Buffalo (SUNY at Buffalo), the University of Oregon,

and Florida International University. But simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The submitted letter from [REDACTED], Chair of the Department of Accounting, SUNY at Buffalo, does not serve as independent evidence that would substantiate [REDACTED] opinion. This letter merely explained [REDACTED] authority to grant college-level credit for academic equivalence in the fields of accounting, finance, and related areas. However, granting college-level credit for academic equivalence is incongruous with determining whether a position would be performed by an accountant.

The AAO wishes to point out that Dr. Tiras opined that the beneficiary's duties:

[A]re reflective of a specific course of study in the field of [a]ccounting, which include [f]inance, [a]uditing, [c]ost [a]ccounting, [f]inancial [a]ccounting, and other related areas.

The *Handbook* explains that bookkeepers and accounting clerks often hold an associate's degree in business or accounting. Thus, it is very likely that bookkeepers and accounting clerks would have taken coursework in finance, auditing, cost accounting, financial accounting, the courses that [REDACTED] opined reflect the duties of the proffered position.

The petitioner submitted no evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Because the petitioner has stated that it has no past practice of requiring a degree or its equivalent for the proffered position, it cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks, positions that do not require a bachelor's degree. No evidence in the record shows that the duties of the proffered position rise beyond this level. 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.