



U.S. Citizenship  
and Immigration  
Services



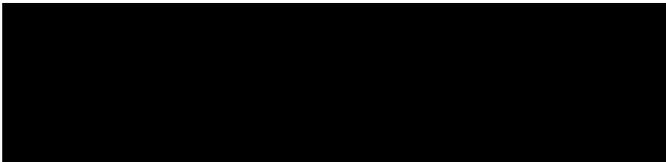
FILE: WAC 03 224 54796 Office: CALIFORNIA SERVICE CENTER

Date: DEC 10 2004

IN RE: Petitioner: [Redacted]  
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:



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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

**Identifying information to  
prevent clearly and warrantec  
invasion of personal privacy**

**DISCUSSION:** The director of the California 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 company that consults on the production of television commercials, as well as oversees all aspects of television commercial production and postproduction. It seeks to employ the beneficiary as an accountant. The director denied the petition because he determined that the position did not meet the criteria required for classification as a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(H)(i)(b), provides 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 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:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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.

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 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 seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's support letter accompanying the Form I-129; and counsel to the petitioner's response to the director's request for evidence.

On August 7, 2003, the director requested the petitioner to provide further evidence that the proffered position was a specialty occupation, including a more detailed description of the position, with time spent on each duty, level of responsibility, hours of work per week, types of employees supervised and the minimum education, training and experience necessary to do the job; evidence that the position met any of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); and copies of any current or past job announcements, or advertisements for the proffered position.

In response, the petitioner provided a detailed accounting of the duties to be undertaken by the beneficiary on a part-time basis and the percentage of the beneficiary's time required for each duty. According to this account, the beneficiary was to:

- Prepare, analyze and verify quarterly/yearly tax returns (5%);
- Perform audits; prepare payroll statements and deductions, monthly expense reports and financial statements (15%);
- Prepare company's general ledger, monthly and yearly financial reports (10%);
- Monitor information systems; compile and analyze financial information to prepare entries into accounts (10%);
- Detail company assets, liabilities and capital and provide tax-planning advice (5%);
- Review finances and current taxes and devise a long-range tax plan and recommend ways to reduce taxes (10%);
- Advise and provide recommendation regarding tax strategies, advantages and disadvantages of certain business decisions or transactions (10%);
- Devise a financial system to help the company establish a more systematic and smooth procedure (10%);

- Prepare balance sheets, profit and loss statements, necessary checks, payroll, tax remittances and other reports to summarize current and projected financial positions (10%);
- Modify and coordinate implementation of the accounting and accounting control procedures (5%);
- Monitor the budgeting, performance evaluation, and cost and assets management (5%);
- Prepare correspondence with existing and prospective clients regarding transactions, financing and billing statements (5%); and
- Analyze the transactions and prepare billing statements (5%).

The petitioner also submitted Internet advertisements for accountants and cited the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the *Dictionary of Occupational Titles (DOT)* as sources supporting the petitioner's contention that its proffered position was a specialty occupation.

The director denied the petition on October 23, 2003 because the position, as described by the petitioner, did not appear to qualify as a specialty occupation, noting that the beneficiary would be performing bookkeeping duties and that, as the petitioner had only one other employee, the duties of the proffered position were not at the level of a specialty occupation. The director further stated that not all of the position's duties indicated a level of complexity or responsibility that would qualify it as a specialty occupation.

On appeal, counsel submits a brief and new evidence, providing materials from the *Handbook* and the *DOT*, and three additional Internet job postings. Counsel states, in part, the following: (1) the director erred in finding that the petitioner's position reflected the duties of a bookkeeping or accounting clerk; and (2) that the proffered position, as it is that of accountant, qualifies as a specialty occupation under all four criteria found at 8 C.F.R. § 214.2(h)(iii)(A).

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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 is the normal minimum requirement for entry into the particular position; and 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 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), that the director has failed to recognize that the nature of the position is that of an accountant and erred in basing his decision on the fact that some of the beneficiary's duties will involve bookkeeping. Counsel contends that while accountants may have to engage in some bookkeeping functions, this does not "nullify their positions as accountants" and cites *Perez v. Ashcroft*, 236 F. Supp. 2d 899, 904 (N.D. Ill. 2002) in support of this position.

Citizenship and Immigration Services (CIS) does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors that CIS considers. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely reviews the *Handbook* for the educational requirements of particular occupations.

As stated in the 2004-2005 edition of 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 that of management or private accountants who:

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.

Although the proffered position would require the beneficiary to analyze financial information for the petitioner, it does not appear to have the broad-ranging responsibilities just outlined. Instead, the AAO finds that the proffered position's duties are more closely aligned with the duties performed by bookkeeping, accounting, and auditing clerks who are required to have only a high school diploma to gain employment. The record shows that the beneficiary would largely be responsible for the petitioner's financial recordkeeping, focusing on the review, preparation and maintenance of financial data, duties that closely resemble those of bookkeepers, accounting and auditing clerks as described in the *Handbook*:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts.

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billings vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

Counsel relies, in part, on the *DOT* to support the petitioner's contention that the proffered position requires the minimum of a bachelor's degree, stating that the position of accountant is listed with an SVP rating of 8, the equivalent of four to ten years of education combined with experience. However, the AAO does not find the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Counsel also references *Perez v. Ashcroft*, 236 F. Supp. 2d 899, 904 (N.D. Ill. 2002) as supporting the petitioner's assertions that its position qualifies as a specialty occupation. The AAO notes, however, that the court's findings in *Perez v. Ashcroft* focused on issues unrelated to this proceeding, specifically whether formal religious training was required for classification as a special immigrant religious worker.

Having reviewed the evidence before it, the AAO, like the director, concludes that the petitioner has not met the requirements of the first criterion, that the minimum requirement for entry into the proffered position requires a baccalaureate or higher degree, or its equivalent. While the director also questioned the nature of the proffered position because the petitioner had only one other employee, the basis for his denial rested on his determination that the specific duties of the position were those of a bookkeeper, not an accountant. The AAO also finds the proffered position to be closely aligned to that of a bookkeeping, accounting or auditing clerk for which a high school diploma is sufficient educational background.

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 the specific specialty – counsel provides copies of Internet job postings for accountants. These job postings do not, however, constitute evidence that businesses similar to the petitioner require the services of individuals with baccalaureate degrees in parallel positions. Based on

the information provided in the submissions, it is not possible to conclude that these businesses have operations, numbers of employees, and annual income similar to that of the petitioner.

In its response to the director's request for evidence, the petitioner contended that it should not be required to show that a similarly sized business or its industry imposes a degree requirement in the specialty and referenced the findings of *Matter of General Atomic Company* 17 I&N Dec. 532 (Comm. 1980). The AAO does not, however, find this case -- which focused on whether an individual with an undergraduate degree in civil engineering was of distinguished merit and ability -- to have a bearing on the issues before it. The AAO also notes the petitioner's reference to *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Calif. 1989) and agrees that it is not the size of a petitioner's firm that governs whether its position qualifies as a specialty occupation, but the specific duties of the petitioner's position. However, the court's findings in this case -- that the former Immigration and Naturalization Service (INS) erred in reaching its decision because it had failed to consider the responsibilities of the proffered position -- are not determinative in that CIS is specifically reviewing the duties of the petitioner's proffered position.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine the petitioner's ability to meet the third criterion, the director's request for evidence asked for copies of past and current job announcements or advertisements soliciting for the proffered position. The petitioner, however, did not provide such information in its response. On appeal, counsel states that the petitioner has not previously needed an accountant and does not, therefore, have the records that would allow it to meet the requirements of the third criterion.

The fourth criterion 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 noted previously, the duties of the proffered position have been determined to be comparable to those of bookkeeping, accounting, and auditing clerks, as described in the *Handbook*, and may be filled by individuals with high school diplomas. The petitioner seeks to overcome this determination by asserting that the duties of its proffered position require an individual to have training that can normally be obtained only with a bachelor's degree. However, the evidence provided by the petitioner concerning the position's duties, and already reviewed by the AAO, does not lead it to conclude that these duties are more specialized or complex than those described in the *Handbook* for bookkeepers or accounting clerks. As a result, the AAO finds that the petitioner has not established that its position qualifies as a specialty occupation under the fourth criterion.

For reasons related in the preceding discussion, 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.

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