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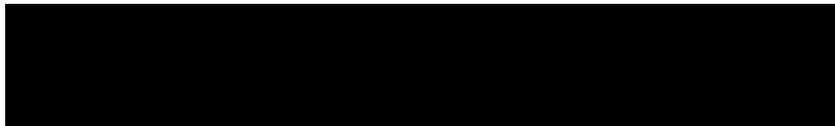
U.S. Citizenship  
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Services

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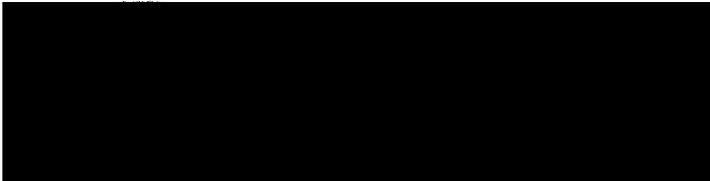
FILE: WAC 03 028 50689 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 corporation providing these services to commercial businesses and government: courier; messenger; freight and parcel delivery; furniture delivery and assembly; furniture repair; storage; and logistics. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify her 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 on the basis that the petitioner had not established that the proffered position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director noted in particular that “a significant amount of the beneficiary’s time will be spent performing many of the duties of bookkeeping, accounting, and auditing clerks, an occupation that does not require, as a minimum, the attainment of a baccalaureate level degree in accounting.”

On appeal, counsel asserts that the petitioner has established that the proffered position qualifies under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) for positions that normally require at least a bachelor’s degree, or its equivalent, in a specific specialty. Counsel contends that the evidence of record clearly establishes that the beneficiary would be performing as an accountant, and that the director abused his discretion by basing his decision on “the simplistic rationalization that some of the duties constitute that of a bookkeeper.” (Brief, at page 4.)

For the reasons discussed below, the AAO finds that the director was correct to deny the petition because the petitioner did not establish that it has actually proffered an accountant position. The AAO based its decision upon its consideration of the entire record in this proceeding, including: (1) the petitioner’s Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B as annotated by counsel, and counsel’s brief on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.” (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii) explicitly recognize that a genuine accountant position - that is, one the performance of which requires at least a baccalaureate or the equivalent in accounting - is a specialty occupation. The AAO finds, however, that the extent to which the petitioner described the proffered position and its duties did not establish the position required such a level of accounting education.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The petitioner's letter of reply to the RFE presented the proposed duties and their respective time requirements as follows:

<u>Specific Job Duties</u>	<u>% of Time</u>
a) to construct routine spreadsheet applications, prepare financial data for input into the company's computerized financial systems, and generate reports.	20%
b) to monitor revenue and expenses for unit accounts, and ensure expenditure control and compliance with funding and reporting requirements, company policy and standard accounting procedures.	15%
c) to analyze, reconcile, balance and maintain accounting records.	20%
d) to develop budgets and special financial reports, and prepare payroll and payroll tax returns.	20%
e) to review expenditure for availability of funding, mathematical correctness and compliance with company policy and federal and state laws.	10%
f) to implement sound and effective accounting policies and procedures, and manage the financial aspect of the company that includes [the] financial budget, reports, and cost-effectiveness program.	15%

While the above information indicates that the proffered position involves accounting principles, it is too generalized and abstract to convey that the position would require the possession and application of at least a bachelor's degree level, or the equivalent, of accounting knowledge. This lack of concrete detail about the proposed duties is typical of the entire record. For instance, the Rationale for Employment of Accountant section of the letter of reply to the RFE (at pages 4, and 5) identifies such generalized tasks as: "[d]irects the implementation of a general accounting system for keeping of accounts and records of disbursements, expenses, tax payments and general ledger accounts"; "[p]erforms audit, prepares reports, and inspects the company's accounting systems to determine efficiency and internal control"; "[p]repare financial reports, findings, and recommendations for company management, and provides tax planning and advisory [sic]"; and "reviews company accounting controls & audit procedures in accordance with generally accepted accounting principles for operations revenue, overhead and expenses." In the same vein, the first paragraph of this particular section of the RFE reply states that a bachelor's degree in accounting is required "due to the complexity of the accounts and the volume of the accounts that are being maintained," but no meaningful information is provided about the accounts to substantiate this assertion. Such abstract information fails to convey the particular skills and competencies, and hence the educational credentials, that a person must possess to perform the proffered position.

The proposed duties are described in general terms that are generic to accounting-type positions in general. They convey no meaningful details about the actual, employer-specific matters that would be the subject of

the beneficiary's work. Different employers could use such abstract terms to generally describe a variety of jobs that are substantially different in their actual performance requirements and in the level of accounting knowledge that they would actually require. Because the general terms that are used throughout the record do not convey the practical nature of this particular job that is proffered as an accountant position, the AAO cannot determine the level of accounting knowledge required for its performance. The petitioner, therefore, has not provided CIS with sufficient information to determine that actual performance of the job would require the application of accounting knowledge on a level that is associated with at least a baccalaureate degree or equivalent in accounting. Lacking an adequate factual basis in the record, the AAO will not speculate on this matter. The burden of proof in this proceeding rests solely with the petitioner, Section 291 of the Act, 8 U.S.C. § 1361, and the petitioner has not sustained that burden.

Contrary to counsel's contention, the director's decision does not demonstrate that he equated the proffered position with that of a bookkeeper. Rather, the decision correctly observed that "a significant amount of the time would be spent performing many of the duties of bookkeeping, accounting, and auditing clerks." The accuracy of this comment is evident in reading the duty descriptions in the light of the relevant information in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The AAO finds that, while the evidence of record indicates that the proffered position would require at least the level of accounting knowledge required by such clerks – which is less than a bachelor's degree or its equivalent – it does not establish what higher level of knowledge, if any, would be required to perform the particular duties of the proffered position.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook* recognizes that employers require at least a bachelor's degree in accounting for genuine accountant positions. However, the *Handbook* also indicates that there are non-accountant accounting positions which may require some knowledge of accounting principles but less than the highly specialized knowledge associated with a baccalaureate or equivalent in accounting. See, for instance, the 2004-2005 *Handbook's* information on financial clerks (pages 433-435) and bookkeeping, accounting, and auditing clerks (pages 437, 438). The abstract and generic nature of the evidence, discussed earlier, is insufficient to establish that the proffered position comports with a genuine accountant position or any other position which normally requires at least a bachelor's degree in a specific specialty.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The *first* alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is a genuine accountant position or any other position for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record contains no submissions from a professional association about degree requirements, or from industry sources on hiring and recruiting practices.

The petitioner also has not established that the proffered position qualifies under the *second* alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Nor has the petitioner satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), that is, proposed duties that are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence presented by the petitioner is too generic and abstract to establish the specialization, complexity, or uniqueness required by these criteria.

Finally, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which pertains to situations where, because of the performance demands of the proffered position, a petitioner normally requires a bachelor's degree or its equivalent in a specific specialty, is not a factor. This is the first time that the petitioner has offered the position.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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