

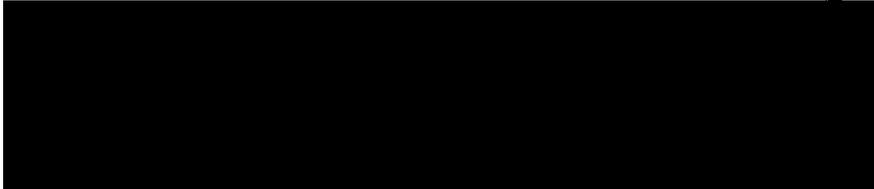
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U.S. Citizenship
and Immigration
Services

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DEC 14 2004

FILE: WAC 03 250 50760 Office: CALIFORNIA SERVICE CENTER Date:

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 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 corporation engaged in the sale of retail apparel. In order to employ the beneficiary as an accounting assistant, 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).

In denying the petition on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation, the director quoted extensively from sections of the 2002-2003 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* to support his findings that "the beneficiary will be spending a significant amount of her 40-hour workweek performing the duties of an Accounting Clerk" and that the proposed duties do not comport with "the duties of a Management Accountant, as described in the *Handbook*, [which] overwhelmingly involve the analysis of financial information, preparation of financial reports, and planning and budgeting."

While the Form I-129 specified "accounting clerk" as the job title, the labor condition application and the letters submitted by the petitioner refer to the proffered position as "accounting assistant." For specialty occupation determinations, however, the specific duties are decisive, not the job title.

In an attachment to the Form I-129, the petitioner described the proposed duties as follows:

Compute, classify, and record numerical data to keep financial records complete. Perform any combination of routine calculating, posting and verifying duties to obtain primary financial data for use in maintaining accounting records. May also check the accuracy of figures, calculations, and postings pertaining to business transactions recorded by other workers. Assist the accounting department with processing foreign letters of credit and wire transfer payments, processing inventory accounts payables, updating spreadsheets and reporting daily and monthly sales figures, calculating and updating inventory cost records and processing cash receipts.

In support of his contention that the director's decision was reversible error, counsel submits an October 31, 2003 letter from the petitioner's corporate controller that declares that the responsibilities of the assistant accountant position require "either a degree in accounting or the equivalent knowledge acquired by obtaining a degree in accounting." Here follows a summation of the letter's major points. The assistant accountant must "understand and apply accounting principles such as determining the proper classification of certain expenses either as balance sheet or income statement items." This position involves preparing and updating "[the petitioner's] monthly financial statements" for the Chief Financial Officer (CFO). The beneficiary would spend significant time "determining and managing the costs of [the petitioner's] inventory," a "function [that] cannot be performed without a solid understanding of inventory cost accounting principles." The assistant accountant also "reconciles certain accounting records and communicates with key inventory vendors, landlords, and other departments for inventory and other accounting questions," and this function

requires “understanding and being able to effectively communicate how debits and credits work and relate to each other.” While some of the beneficiary’s work would be “routine and clerical in nature,” “higher-level job responsibilities include reviewing and maintaining [the petitioner’s] cost accounting records for accuracy and preparing financial statement projection files for [the] CFO and other management to use in their decision-making process.”

The director’s decision to deny the petition was correct. The AAO based this conclusion on its consideration of the entire record of proceeding before it, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (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 and counsel’s brief with the aforementioned October 31, 2003 controller’s letter.

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.

A genuine accountant is a specialty occupation. However, on the basis of the information in the record, the AAO could not reasonably conclude that the beneficiary would in fact be working as an accountant, that is, performing duties that require the theoretical and practical application of the highly specialized accounting knowledge that a person attains by a bachelor’s degree, or its equivalent, in accounting.

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.

Here the decisive question is not whether the proffered position requires some knowledge of accounting principles - which it does - but rather whether the position is one that normally requires the level of accounting knowledge that is signified by at least a bachelor’s degree, or its equivalent, in accounting.

Based on the evidence of record, the AAO does not agree with counsel’s view that the proffered position aligns more closely with the accountant occupation than with the financial clerk occupations as they are described in the *Handbook*.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the relevant information from the version of the 2002-2003 edition of the *Handbook*, as this is the edition to which both the director and counsel refer. The relevant sections, namely, those entitled “Financial Clerks,” “Bookkeeping, Accounting, and Auditing Clerks,” and “Accountants and Auditors,” recognize that employers require at least a bachelor’s degree in accounting for genuine accountant positions. However, these sections also indicate that there are *non-accountant* accounting positions which require some knowledge of accounting principles and practices, but less than the highly specialized knowledge associated with a baccalaureate degree or its equivalent in accounting.

These positions would include bookkeepers, full-charge bookkeepers, accounting clerks, and auditing clerks. At page 391 of the 2002-2003 edition, the *Handbook* noted that full-charge bookkeepers are increasingly “called upon to do much of the work of accountants,” and that the best prospects for these normally non-degreed positions belong to “[t]hose with several years of accounting or bookkeeper certification.” Likewise, at page 23 of the same edition, the *Handbook* indicates that “junior accounting positions” may be held by “graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers.”

As indicated by the portions of the record quoted above, while the petitioner’s evidence indicates that the proffered position involves some application of accounting principles, it does not establish that the position is a genuine accountant position, or any other type which normally requires at least a bachelor’s degree, or its equivalent, in a specific specialty. It is not evident that the proposed position exceeds the accounting knowledge needed for the non-accountant positions just discussed that do not normally require a bachelor’s degree or its equivalent in accounting or any other specific specialty.

The AAO assigned no probative weight to opinions offered by counsel or the petitioner that are not supported by evidence in the record. Such generalized declarations include the statement in the aforementioned controller’s letter that the “job responsibilities of this position does [sic], in fact, require either a degree in accounting or the equivalent knowledge acquired by obtaining a degree in accounting,” and counsel’s assertion on appeal that the duties described in the *Handbook* “for Management and Management Accountants are more relevant to [the] beneficiary’s job description than that of a clerk.” 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). Furthermore, 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).

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 type 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, instead of establishing that the proffered position shares a common specialty-degree requirement with the industry, 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. The evidence of record does not establish that the proffered position is either more complex than or unique from jobs that apply some accounting principles but require less than a bachelor's degree level of accounting knowledge.

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 of record does not establish such specialization or complexity.

Finally, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty, is not a factor in this proceeding, as the petitioner does not present a history of recruiting and hiring.

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.