U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: LIN 02 231 53774 Office: NEBRASKA SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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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 property management company, and seeks to employ the beneficiary as an accounting manager. 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).

The director denied the petition on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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), provides, in part, 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)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 proceedings 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accounting manager. Evidence of the beneficiary's duties includes the I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: maintain accurate financial records using Yardi Property Management Software for data entry including receipts, payables, etc.; handle daily banking logistics including transfers; prepare monthly reports for clients and disbursement checks as well as month-end reports; process security deposit reconciliation statements, utility banking statements, and special maintenance invoices; monitor collection files; reconcile bank statements; resolve billing discrepancies; respond to bookkeeping inquiries; prepare payroll; and assist the petitioner with year end corporate and rental property tax preparation. The petitioner does not state that a degree in any particular specialty is required for entry into the offered position, but that it requires its accounting manager to have strong computer skills, keyboard proficiency, three to five years of experience in property management and bookkeeping, and a strong business or finance background.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, 2002-03, at 387-390, the Department Of Labor describes, in part, those duties as follows:

> Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . In small establishments, bookkeeping clerks . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.
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> . . . .
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> More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete . . .
>
> Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks

> keep track of a store's inventory . . .
>
> . . . .
>
> The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties.

The *Handbook* notes that the majority of financial clerk positions require at least a high school diploma, but some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has, therefore, failed to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Counsel does not state on appeal that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that the petitioner normally requires a degree or its equivalent for the offered position, and offers no evidence in this regard. The petitioner has not satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) or (*3*). Furthermore, the duties of the offered position are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty, nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) and (*4*). The duties detailed are routinely performed by bookkeepers, accounting or financial clerks.

The petitioner has, therefore, 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 and the appeal shall accordingly be dismissed.

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