

Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Division of Naturalization



U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 03 070 53220 Office: NEBRASKA SERVICE CENTER Date: JUN 17 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:  
[Redacted]

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.

Handwritten signature of Robert P. Wiemann

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 company that provides engineering services and software consulting 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 Immigration and Nationality Act (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 undated 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, in part: analyzing financial information and preparing monthly, quarterly, and yearly financial reports or statements; setting up and maintaining charts of accounts; reconciling G/L standing accounts, and reviewing expenses; handling accounts payables, accounts receivable, and payroll; providing audit support by maintaining balance sheets and preparing audit schedules; providing information system support; and filing quarterly and annual tax returns. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in accounting, business administration, commerce, economics, or a related field.

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 a corporate accountant, and did not require complex or advanced accounting duties such as preparing detailed financial reports for outside agencies or corporate stockholders. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position resemble those performed by a general ledger bookkeeper or accounting clerk in a small business establishment. The DOL reported that employers do not require a bachelor's degree for these positions.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel contends that the duties of the proffered position are not the same as those of a management accountant, and that the DOL mentions that accounting has four major fields. Counsel maintains that the fundamental tasks of an accountant are to prepare, analyze, and verify financial documents in order to provide information to clients. According to counsel, the beneficiary will carry out these tasks by applying principles and theories of business administration or accounting, or both, to "analyze financial information and prepare monthly, quarterly[,] and yearly financial reports and statements." Counsel claims that the degree requirement is common in the industry, and furthermore claims that this is evinced by the H-1B approvals, advertisements, and affidavits by two similar companies. Counsel avers that the DOL explains that employers require a bachelor's degree to enter into an accountant position. The petitioner, counsel claims, normally requires a bachelor's degree for the proffered position, and counsel submits the petitioner's advertisements to substantiate this claim. Counsel submits information from the U.S. Department of Labor, and states that the salary of the proffered position is far higher than a clerk's salary.

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). According to counsel, the beneficiary will carry out the fundamental tasks of an accountant: prepare, analyze, and verify financial documents, and counsel avers that the DOL explains that employers require a bachelor's degree to enter into an accountant position. Counsel also states that the proffered position's salary is far higher than a clerk's salary.

Counsel's claims are not persuasive. In the first place, 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. According to the *Handbook*, the duties of the offered position are congruous with those performed by bookkeeping, accounting, auditing and financial clerks. For example, the record shows that the petitioner's accountant will analyze financial information and prepare monthly, quarterly, and yearly financial reports or statements; set up and maintain charts of accounts; reconcile G/L standing accounts; review expenses; handle accounts payables, accounts receivable, and payroll; provide audit support by maintaining balance sheets and preparing audit schedules; and file quarterly and annual tax returns. According to the *Handbook*, such 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 AAO now turns to the salary of the proffered position. A salary does not dictate whether a bachelor's degree or its equivalent is normally the minimum requirement for entry into a position. As previously stated, CIS reviews the duties of the position and any supporting evidence to decide whether the position requires a baccalaureate degree in a specific specialty as the minimum for entry into the occupation. Whether the offered salary exceeds the prevailing wage is the petitioner's prerogative.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel claims that the degree requirement is common in the industry, and furthermore claims that the submitted evidence of H-1B approvals, advertisements, and affidavits by two similar companies establish this.

Once again, counsel's claim is not persuasive. Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Nebraska Service Center in the prior cases. In the absence of all of the corroborating evidence contained in their record of proceedings, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the instant H-1B petition is parallel to the prior petitions. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO now considers the submitted advertisements and affidavits. The advertisement seeking an accounts receivable accountant neither describes the duties of the position nor requires a bachelor's degree in accounting. The employer merely prefers a bachelor's degree in accounting. Notably, the petitioner's own advertisement does not require a bachelor's degree in a specific specialty; it simply seeks a "bachelor's degree with some experience in the auditing and accounting field." The affidavits from the two companies have deficiencies: (1) neither company requires a bachelor's degree in a specific specialty; they both require only a BA degree; and (2) although both companies state that they have hired an accountant, because neither letter writer explains the duties of their accountant the AAO cannot determine whether their position is parallel to the proffered position. Thus, the advertisements and affidavits fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

As discussed, the petitioner's advertisement fails to show that it normally requires a degree or its equivalent in a specific specialty for the position. 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. 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.