

PUBLIC COPY

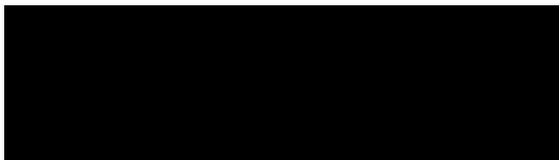
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**



FILE: LIN 02 257 50989 Office: NEBRASKA SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner: 
Beneficiary: 

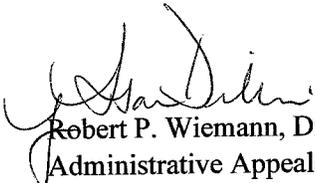
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 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 supplies and medical equipment provider that seeks to employ the beneficiary as an accountant/financial analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information.

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)(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.

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 accountant/financial analyst. Evidence of the beneficiary's duties includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: compile, organize and analyze financial data for the preparation of financial reports; adapt computer software to implement and oversee systems for the maintenance of inventory records, and preparation of cost and variance analysis reports; analyze financial data to develop budgeting plans for long/short term business expansion; and confer with management regarding capital expenditures, marketing proposals and the achievement of profit objectives. The petitioner stated that the duties of the proffered position require a minimum of a bachelor's degree in accounting, finance, business administration or a related field.

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 meets any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position submitted by the petitioner with the filing of the I-129 petition, and in response to the director's request for evidence are vague and generic, giving little insight into precisely what tasks the beneficiary would perform on a daily basis. For example, the petitioner notes that the beneficiary would spend 30 per cent of her time compiling, organizing and analyzing financial data for the preparation of financial reports. There is no indication as to what type of data would be reviewed, or what type of reports would be generated by the beneficiary. The petitioner states that another 35 per cent of the beneficiary's time would be used analyzing expense and income data to develop budgeting plans for future expansion. It is impossible to determine from this description precisely what tasks the beneficiary would undertake, or the level of responsibility she would have, in the budgeting process. The duties described do not appear to involve the theoretical and practical application of a body of highly specialized knowledge. Rather, they appear to be duties performed by bookkeepers, accounting or financial clerks. In the *Occupational Outlook Handbook*, 2002-03 (*Handbook*) 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. 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. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. . . .

. . . .

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

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software on personal computers. . . .

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 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. *Id.* at 387. Thus, the petitioner has not established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner provides copies of job advertisements to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The descriptions noted in those advertisements, however, are not substantially similar to the description provided for the proffered position and do not establish an industry standard for parallel positions. Nor do the duties of the proffered position appear to be so complex or unique that they can be performed only by an individual with a degree. The petitioner also fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the position offered. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, the duties, as described, are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As noted above, the duties described are performed by those routinely holding less than a baccalaureate level education. The petitioner has, accordingly, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), and 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.

LIN 02 257 50989

Page 5

§ 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

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