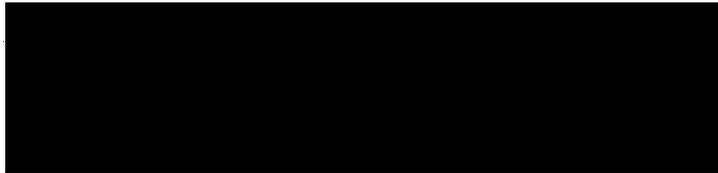


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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

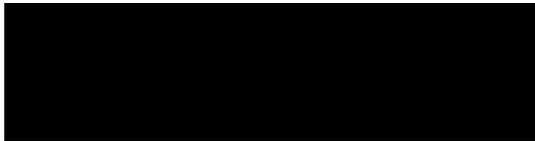


FILE: WAC 03 240 51548 Office: CALIFORNIA SERVICE CENTER Date: NOV 20 2004

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:



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

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

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 medical clinic/outpatient surgery center that seeks to employ the beneficiary as an accountant. 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 holding that the petitioner did not respond to a request for evidence wherein the director asked the petitioner to provide evidence that its competitors with a similar number of employees and annual income employ in-house accountants, and thereby precluded a material line of inquiry. The director further found that since the petitioner did not provide evidence that similar businesses in the industry use the services of in-house accountants, there was no bona fide position that can be considered a specialty occupation.

On appeal, counsel submits a brief stating that the director's decision is in error, and that the proffered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the petitioner's failure to respond to the director's request for evidence precluded a material line of inquiry, and whether the failure of the petitioner to respond to that request indicates that there is no bona fide position that can be considered 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.

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 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 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On August 30, 2003, the director issued a request for evidence in this proceeding. Specifically, the petitioner was asked to provide, in part, evidence that competitors with a similar number of employees and annual income have hired accountants in the past, or are now using the services of an accountant. The petitioner did not provide that information, stating that the proffered position qualified as a specialty occupation under three of the four above cited regulatory criteria. The petitioner correctly stated that it was not required to establish that a degree requirement is common to the industry in parallel positions among similar organizations in order to establish that the proffered position is a specialty occupation. The petitioner need only meet one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) in order to establish that the offered position qualifies as a specialty occupation. Nevertheless, the AAO notes that the director also requested copies of Forms DE-6, copies of the petitioner's California Employment Development Department (EDD) Quarterly Wage Reports for all employees for the last two quarters that were accepted by the State of California. In response, the petitioner submitted quarterly reports for the quarters ending March 21, 2003 and June 30, 2003. These reports indicate that the petitioner has three employees, not 21 employees as indicated on the petition. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without any further proof in the file of the company's financial status such as the petitioner's tax returns, the director properly questioned whether there was a reasonable and credible offer of employment for an accountant consistent with the needs of the petitioning organization. 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. The petitioner has failed to prove that it will employ the beneficiary temporarily in a specialty occupation.

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

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) the 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. 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: prepare financial reports by utilizing and applying principles of accounting required to analyze financial information and records (15 percent of the time); attend to cost accounting – this includes determination of costs of business activity, including purchases of product/inventory and labor, analyzing and recording the data obtained, and attending to the analysis of changes in the business as it pertains to the effect on costs in the business (15 percent of the time); provide management with reports regarding all elements that may affect the expenditures and business costs (10 percent of the time); prepare balance sheets and profit/loss accounts (10 percent of the time); make cash flow projections based on income and expenditures (15 percent of the time); prepare budgets for the business (15 percent of the time); prepare monthly and quarterly financial reports as well as payroll tax reports (15 percent of the time); and prepare management reports (5 percent of the time). The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

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 U.S. 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 presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner indicates that the beneficiary would: prepare unspecified accounting reports applying principles of accounting (approximately 15 percent of the time); prepare unspecified reports to management regarding "all elements" that may affect costs and expenditures (approximately 10 percent of the time); prepare unspecified monthly and quarterly financial reports (approximately 15 percent of the time); and preparation of unspecified management reports (approximately 5 percent of the time). It is impossible to determine from this generic description of the tasks to be performed whether performance of these duties requires the theoretical and practical application of a body of highly specialized knowledge, or whether the tasks are those normally performed by experienced bookkeepers, accounting or financial clerks. It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. This, the petitioner has failed to do. As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel position among similar organizations; the duties of the offered position are so complex or unique that they can be performed by an individual with a degree; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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