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U.S. Citizenship  
and Immigration  
Services

DZ

NOV 29 2004

FILE: WAC 03 240 54823 Office: CALIFORNIA SERVICE CENTER Date:

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

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. 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 wholesale and retail garment sales company 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 it is not a specialty occupation. Counsel submits a brief and states that it is a specialty occupation and that the duties of the position are complex and specialized.

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.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated August 30, 2003; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary would analyze and compile financial information to prepare financial reports and entries to accounts, such as general ledger accounts; analyze financial information detailing assets, liabilities and capital; prepare balance sheets, profit and loss statements and other reports; audit contracts, orders, vouchers, and prepare report to substantiate individual transactions; analyze past and present financial operation, trends and costs, estimated and realized revenues to prepare budget and project future revenues and expenses; interpret budgets to management and advise management on effective use of resources and assumptions underlying budget forecasts; establish, modify, document and coordinate implementation of accounting and accounting control procedures; prepare tax returns, and computer taxes according to prescribed rates, laws, and regulations; ensure that the company complies with periodic tax payment, information reporting and other taxing authority requirements; and record collection of rents and impounds, maintain books and records, arrange for and pay insurance, calculate and pay local licenses and fees, prepare payroll and review account payables. The petitioner indicated that the position would require a candidate to possess a bachelor's degree in accounting or its equivalent.

The director denied the petition and stated that the duties of the proffered position reflect the duties of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of bookkeeping, accounting, and auditing clerks. The director stated that this classification did not require a baccalaureate degree in a specific specialty for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the position involves accounting and auditing functions. Counsel further states that these duties are not the duties of a bookkeeper or accounting/auditing clerk, and that the duties are complex and sophisticated.

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 turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, while the *Handbook* clearly establishes that accounting is a specialty occupation, what is less clear is whether the proffered position is an accounting

position. While counsel is correct in his observation that an accountant position is distinct from an accounting clerk or bookkeeper position, the evidence in the record does not sufficiently establish that the duties to be performed by the beneficiary are primarily those of an accountant. Many of the duties, such as preparing entries to accounts, documenting business transactions, maintaining books and records, preparing payrolls are routine bookkeeping duties performed on a regular basis that do not reflect the duties of an accountant. On appeal, counsel reiterates the duties of the position that are in the original petition. Counsel also states that as the petitioner's clients continue to grow and its business increases, there is a need to regularly conduct inventories of its product lines, determine the depreciation values of office equipment, prepare and implement budgets, make financial projections and devise ways to minimize costs and increase profits. Counsel further states that it is a wise business decision to hire an accountant to develop a more sophisticated accounting method to address the petitioner's needs. Nevertheless, neither counsel nor the petitioner submit any further documentary evidence with regard to the petitioner's present accounting or bookkeeping systems and what personnel presently perform these duties. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the organizational chart submitted by the petitioner identifies five staff members. Of these staff members, three are contractual sales associates. The remaining staff positions are the president, and two vacant positions for a market research analyst and an accountant. With regard to the petitioner's business volume that would necessitate a more sophisticated accounting system, the I-129 petition identifies the gross annual income of the petitioner as \$200,000, with no information provided on the petitioner's net annual income. Without more persuasive evidence, as correctly noted by the director, the position appears to be a bookkeeping/accounting clerk position.

In the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those which 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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

The *Handbook* notes no specific training or educational requirements listed for the bookkeeping classification. However, it notes that "Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial

transactions, from payroll to billing.” Thus, the *Handbook* does not establish that the proffered position requires a minimum of a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar businesses, counsel provided four job vacancy announcements in its response to the director’s request for further evidence. The vacancy announcements include a staff accountant position with a personal computer club that has 40 stores; a staff accountant position that provides month-end closings for two divisions of a wholesale distributor of hair care products; a corporate accountant position for a furniture company of undetermined size and business volume; and a staff accountant for a lifestyle, marketing, and media company, also of undetermined size and business volume. Without more persuasive evidence, none of these four companies have been established as businesses similar to the petitioner’s business operation. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its petition that private accounting firms presently handled its accounting needs. The petitioner also stated that it desired to have a fulltime in-house accountant in the future. Therefore, the proffered position is a new position, and the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the majority of duties of the position appear routine to the financial and budgeting operations of any business. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a bookkeeper or accounting clerk. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.