

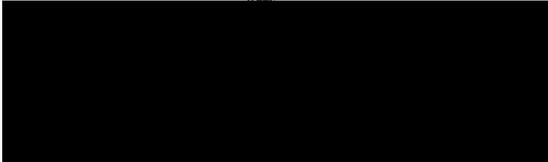
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U.S. Citizenship
and Immigration
Services

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NOV 30 2004

FILE: WAC 03 214 52665

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

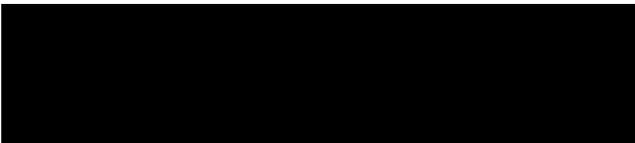
Petitioner:

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 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 27-year-old gems and jewelry distributor with four employees, including the owner, that seeks to employ the beneficiary as an accountant to work 30-35 hours each week for three years. 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 memorandum of law and new evidence on the beneficiary's qualifications and of parallel positions in other companies.

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: designing an accounting system, preparing balance sheets, income statements, cash-flow statements; preparing budget analyses; and performing periodic inventory of merchandise. Additional duties included maintaining journal and ledger records, analyzing the general ledger, closing the books each month, paying the bills, follow-up of customers' bounced checks, depositing proceeds of sales, reconciling bank statements, preparing month-end financial reports, preparing tax returns, and preparing financial statements. Counsel conceded in his Sept. 11, 2003 letter, that many of the duties "can be performed by a bookkeeper," although he asserts that the primary tasks are those requiring an accountant with a bachelor's degree in accounting or a closely related field.

The director found that the proffered position was not a specialty occupation because the job is not an accountant but rather those of a financial record-keeper, bookkeeper and accounting clerk. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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 proffered position is that of an in-house accountant for a company "gearing towards expansion," and supplements an earlier credentials evaluation with three others. According to counsel, the proffered position is a specialty occupation because the specific duties meet at least three of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). Thus, counsel asserts the evidence establishes a specialty occupation under any of the four criteria and, more specifically, that the duties are so specialized and complex the requisite knowledge is usually associated with a four-year degree; that the degree requirement is common to the industry in parallel positions; and that for the petitioner, the degree requirement is the normal minimum.

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. Minn. 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. The AAO does not concur with counsel that the proffered position is that of an accountant. As stated by the director, while some of the beneficiary's job duties entail the level of responsibility of such an occupation, they are incidental to the primary duties of bookkeeping or accounting clerical work. A review of the accounting clerk job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that the job duties resemble those of a bookkeeper or accounting clerk. "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." *Id* at 437. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an accounting clerk or bookkeeping job.

Counsel has submitted new evaluation reports on appeal that supplement the petitioner's response to the director's request for evidence on, among other things, the specific duties of the proffered position.

In his August 26, 2003 letter, [REDACTED] asserts that for small companies such as the petitioner, accounting functions tend to be "particularly complex" given the range of responsibilities. Such an assertion instead supports the view expressed in the *Handbook*, as paraphrased above, that in "small establishments, bookkeeping clerks handle all financial transactions and recordkeeping." Rather than calling for a specialist capable of performing highly complex, theoretically difficult tasks, the position demands many routine skills of one person on the level of a bookkeeper or accounting clerk.

The August 26, 2003 letter of the petitioner's expert, [REDACTED] by lengthening the list of duties contemplated by the proffered position, confirms that most of the tasks involve bookkeeping: maintaining the company books; computing taxes; making sure taxes are paid on time and that the company complies with rules for employees; keeping a computer journal; adjusting journal entries creating a general ledger; making month-end entries and transactions; collecting due amounts, collecting returned checks.

In her August 25, 2003 letter, vocational analyst [REDACTED] makes a lengthy and thorough case for why she thinks the duties of an accountant qualify as a specialty occupation under the relevant federal regulations. However, whether the position of an accountant is a specialty occupation is not what is in controversy here. Instead, the petitioner has not established that the proffered position is an accounting position, according to the guiding principles of the *Handbook*.

Specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants —also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work.

Some of the duties described in the *Handbook* at first glance seem to apply to the proffered position including financial analysis; planning and budgeting; studying tax regulations; cost accounting; developing, implementing, and maintaining budgetary systems; preparing and interpreting financial records; verifying records on assets, capital, and payroll; and performing cash flow analysis and account reconciliation and asset management. Yet, a closer study of the beneficiary's duties reveals its scope differs dramatically from the

Handbook's depiction of an accountant. In the *Handbook*, accountants prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, management accountants are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for non-management groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, we find that the range of the proffered position's duties and responsibilities do not rise to the level of those of an accountant, particularly a management accountant or an in-house financial accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

In comparison to the *Handbook's* information, the duties of the proffered position do not appear to resemble those performed by a financial analyst or a personal financial advisor. A financial analyst usually works for a bank, insurance company, mutual and pension fund, securities firm, and other businesses – not a jewelry distributor such as the petitioning entity. Personal financial advisors are either self-employed, operating small investment advisory firms; or they work for securities and commodity brokers, exchanges, and investment services firms; or are employed by depository and non-depository institutions such as banks, savings institutions, and credit unions; or they work for insurance carriers and insurance agents, brokers, and services. As such, it is very improbable that a jewelry distributor would employ a personal financial advisor.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for accountants. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. In one, the accountant would be required to analyze financial information preliminary to its entry into accounts. Another would work on employee benefits plans, suggesting the position is not similar in size of company or scope of duties to that offered by the petitioner. In addition to the proffered position not being an accounting position, the petitioner's industry is not in art resources or similar to a company that contracts with the federal government, as indicated in one of the ads. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or 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. On appeal, counsel states that the petitioner “has never employed a full-time accountant in the past” but only on an “as-needed” basis. The record, therefore, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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 duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.