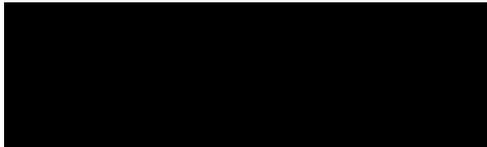




U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 03 098 54408 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 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

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

**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 operates a home providing non-medical care for mentally disabled adults. It seeks to employ the beneficiary as an accountant, and endeavors to classify him 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 on the basis that the offered position was not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position is a specialty occupation.

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 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.

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 notice of intent to deny (NOID); (3) the petitioner's response to the director's NOID; (4) the director's denial letter; and (5) the Form I-290B with 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 was included with the I-129 petition and in response to the director's NOID. According to this evidence the beneficiary would: calculate employee wages and prepare social security and other tax reports; create and monitor accounts receivable/payable; develop, maintain, and analyze budgets and prepare periodic reports comparing budget costs to actual costs; prepare periodic and cash budgets; compute break-even points; appraise, evaluate and conduct inventory of property and equipment, record its value, and prepare reports to management; calculate the pricing of inventory; apply accounting principles to inventory valuation; compute periodic depreciation; record property and equipment transactions; develop, implement, modify, and coordinate implementation of sound accounting control procedures and adapt accounting and record keeping to current technology; analyze forms, records, procedures, processing methods, and reports used by the business and make revisions where appropriate; integrate control measures throughout the accounting system; analyze operation trends, costs, revenues, financial commitments, and obligations incurred to project future revenues and expenses; apply horizontal analysis, trend analysis, and vertical analysis to financial statements; apply ratio analysis to financial statements in the study of the company's liquidity, profitability, and long-term solvency; analyze financial information detailing assets, liabilities, and capital; prepare balance sheets and profit and loss statements; prepare on a monthly basis an income statement, balance sheet and other reports to summarize current and projected company financial position; and prepare on a semi-annual basis an owner's equity statement. The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

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 indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) and qualifies as a specialty occupation.

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 AAO

notes that the *Handbook* indicates that public accountants generally have their own businesses or work for public accounting firms, while management accountants are usually part of an executive team involved in strategic planning or new product development. The duties of the proffered position, however, are essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, 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. . . .

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. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

....

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 . . . .

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 duties of the proffered position fall within those listed above. As described by the petitioner, they are somewhat varied, fairly generic in nature, and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example bookkeepers, accounting and financial clerks routinely: calculate employee wages and prepare social security and tax reports; create and monitor accounts receivable/payable; prepare and analyze budgets and expenditures, and compute break even points; track and value inventory; compute depreciation; record transactions; set up and modify accounting systems; and prepare balance sheets, profit and loss statements and other accounting reports. The *Handbook* notes that the majority of financial clerk positions require at least a high school diploma, but that some college education 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. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The duties of the proffered position are routinely performed by individuals with less than a baccalaureate level education.

The petitioner also contends, on appeal, that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner's contention in this regard is unpersuasive.

As set forth above, the duties of the position as described, do not appear to require the theoretical and practical application of a body of highly specialized knowledge. They are duties that are routinely performed by bookkeeping, accounting, and financial clerks, not by management or public accountants in the petitioner's business environment. As such, the petitioner has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The petitioner does not contend that the proffered position qualifies as a specialty occupation under the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (3), and offers no evidence in this regard.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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