



U.S. Citizenship
and Immigration
Services

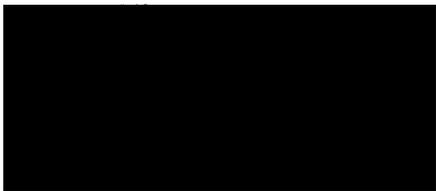


FILE: WAC 03 188 54491 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

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

Identifying data deleted to
prevent unauthorized
invasion of personal privacy

NO DUPLICATION

DISCUSSION: The director of 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 provides assisted living services. It seeks to employ the beneficiary as an in-house financial 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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 in-house financial accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing past and present financial operations as well as estimating future revenues and expenditures to prepare a company budget; maintaining a budgeting system; analyzing records of present and past operations, trends, costs, estimated and realized revenues, administrative commitments, and obligations to project future revenues and expenses; documenting revenues and expenditures; and providing guidance to outside nursing home facility clients. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in accounting or a related field.

The director determined that the proffered position was not a specialty occupation. According to the director, the duties of the proffered position are not at the same level as those of an accountant. The director mentioned that no evidence supported the petitioner's claim that the beneficiary would spend 35 percent of her time providing accounting services to outside assisted living nursing home facilities. The director found the petitioner's statements did not establish a bona fide job offer to the beneficiary as an in-house financial accountant. According to the director, there was insufficient work for the beneficiary given that the petitioner already used the services of a certified financial planner. Finally, the director stated that no evidence demonstrated an industry-wide requirement for the services of an in-house financial accountant or that the petitioner had a unique and specific need of such services.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that about 95 percent of the beneficiary's time will be spent performing professional duties, and that nearly 35 percent of her time will be spent providing accounting services to other companies. Counsel states that the director never requested an itinerary describing the companies that the beneficiary will provide services to; that the regulations do not require such an itinerary; and that it is impossible to identify these companies. Counsel states that the submitted letters from companies interested in the beneficiary's services should address CIS' concern, and asserts that the beneficiary's services will be required by the petitioner, regardless of whether other companies need her accounting services. Counsel emphasizes that the beneficiary will replace the present financial accountant who holds a bachelor's degree in accounting. Citing to a letter from Ms. Evie Mosby, a certified public accountant who operates a company providing accounting services to owners of assisted living homes, counsel endeavors to establish that the degree requirement is common in the industry. Counsel concedes that assisted living nursing homes of the petitioner's size normally do not hire in-house financial accountants, and states that this service is a proactive measure. Counsel refers to the submitted expert opinion of Dr. Jonatan Jelen to assert that the proffered position is a specialty occupation.

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director concluded correctly that the petitioning entity would not require the services of an accountant as described in 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. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Very few of the duties described in the *Handbook* apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in performance evaluation and asset and cost management. Given this significant dissimilarity, the range of the proffered position's duties and responsibilities do not rise to the level of an 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.

The expert opinion letter of [REDACTED] not persuasive in establishing that the proffered position qualifies as a specialty occupation. In the letter, [REDACTED] stated that the duties of the proffered position require the theoretical and practical application of an advanced, highly specialized body of knowledge in the field of

business administration or a related field which requires the attainment of at least a bachelor's degree or its equivalent as the minimum requirement for entry into the occupation. [REDACTED] described the skills and coursework related to the proffered position. Finally, [REDACTED] stated that he has the authority to evaluate whether Mercy College would grant college-level credit for experience, training, and/or courses taken at other U.S. or international universities.

[REDACTED] assertion that the proffered position requires a specific baccalaureate degree is not supported by independent corroborating evidence. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the weight of [REDACTED] statements is diminished. In addition, [REDACTED] authority to grant college-level credit is wholly unrelated to determining whether employers require a specific baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into a particular position. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The submitted letters from assisted living nursing home companies fail to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position. The letters merely emphasize that the companies are interested in using the petitioner's new service offering. Although the authors of the letters stated that the accountant hired by the petitioner must have at least a bachelor's degree in accounting or related field, none of the letters described the duties that the beneficiary will perform for their company. Again, the petitioner cannot establish that the beneficiary's duties will resemble those of an accountant as described in the *Handbook*.

Counsel's statement, that the beneficiary will replace [REDACTED] who holds a bachelor's degree in accounting, does not establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position. [REDACTED] the managing member of Squaw Peak Tax and Financial Services, LLC, never was the petitioner's employee. Although [REDACTED] provided tax services for the petitioning entity, this does not mean that the proffered position therefore requires that a candidate possess a bachelor's degree in accounting. [REDACTED] position with Squaw Peak Tax and Financial Services, LLC is dissimilar from the proffered position.

The letter from [REDACTED] is not sufficient to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. [REDACTED] merely stated that her company provides accounting and tax services to a special market and that "our education and experience enable us to provide our consulting services to this clientele," and that "other educated professionals are greatly needed to service them." This statement does not indicate that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The AAO notes that counsel concedes that assisted living nursing homes of the petitioner's size normally do not hire in-house financial accountants.

There is no evidence that would establish that the position is so complex or unique that it can be performed only by an individual with a degree.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. There is no evidence in the record that would show that the duties of the proffered position rise to the level of those of an accountant as described in the *Handbook*. Consequently, the petitioner fails to establish the fourth criterion at 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.