



U.S. Citizenship  
and Immigration  
Services

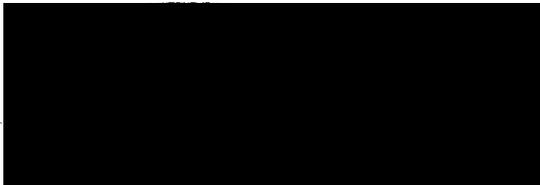


FILE: WAC 02 184 50368 Office: CALIFORNIA SERVICE CENTER Date: **OCT 25 2004**

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

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prevent disclosure of information  
in violation of the Privacy Act

**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 residential care for the elderly. It 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 the proffered position is not a specialty occupation. On appeal, counsel submits additional and previously submitted evidence.

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 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 compiling and analyzing financial information to prepare entries to accounts; creating ledgers for individual accounts and constructing special purpose journals; applying trend, vertical, and ratio analysis to accounts and analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, financial statements, profit and loss statements, income and balance sheets, cash flow statements and cash budgets, and bank reconciliation; calculating the price and valuation of inventory and the cost of ending inventory; identifying, computing, and recording liabilities, depreciation, property, and equipment transactions; applying matching principles and contribution margin analyses; classifying costs; auditing contracts, orders, and vouchers; setting up a voucher and accounting system, control procedures, and a petty cash fund; estimating uncollectible accounts expense and writing off uncollectibles; investing cash in marketable securities; and analyzing forms, records, procedures, and processing methods and revising them. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in accounting or a related field.

The director stated that the petitioner failed to establish that the position qualified as a specialty occupation. The director could not determine the beneficiary's actual duties without a more detailed description of the proposed position, and he stated that the evidentiary record did not indicate that the petitioner normally requires applicants to possess a specific baccalaureate or higher degree.

On appeal, counsel states that the petitioner had submitted a detailed job description along with the petition, and counsel submits her April 26, 2003 letter indicating that the petitioner's job duties had previously been sent to CIS.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 Department of Labor's *Occupational Outlook Handbook* (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 refers to the *Handbook* when determining the educational requirements for certain occupations.

The AAO finds that the proffered position is described in sufficient detail to determine that the petitioner's business 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 submitted evidence from the Employment Development Department about a management accountant is too brief to determine whether the duties of the proffered position would actually be performed by an accountant. Consequently, this evidence is not persuasive.

The job postings do not establish the second criterion — that a specific degree requirement is common to the industry in parallel positions among similar organizations. None of the organizations are similar in nature to the petitioning entity, a provider of residential care for the elderly. Los Angeles County and the City of San Diego are public entities and the Wheeler Clinic provides services for children, adolescents, and adults. This evidence, therefore, cannot establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor is there evidence in the record that would demonstrate the position is so complex or unique that it can be performed only by an individual with a degree. The petitioner had a gross annual income of only \$93,000. Naturally, a company's income will have a direct bearing on the complexity of an accountant's duties. Given the size of the petitioner's income, the beneficiary's duties would not rise to the level of an accountant who is responsible for a significantly higher income or serves as a consultant to various organizations. Consequently, the petitioner cannot demonstrate 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. Again, the duties of the proffered position would not be performed by an accountant as described in the *Handbook*. Additionally, in light of the petitioner's income, the beneficiary's duties would not rise to the level of an accountant who is responsible for a significantly higher income or serves as a consultant to various organizations. As such, 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.