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U.S. Citizenship
and Immigration
Services



02

FILE: WAC 02 175 54056 Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 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

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 company that administers licensed homes that provide residential home care for the developmentally disabled. 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 issued a notice of intent to deny the petition because he determined that the proffered position is not a specialty occupation, and that the beneficiary was not qualified to perform the duties of the position. He then denied the petition when the petitioner did not respond to the notice in a timely manner. Counsel for the petitioner submitted a Form I-290B and stated that he had submitted a response to the director's notice of intent to deny (NOID), and requested additional time to resubmit his initial response and evidence of having filed the response in a timely manner. Following the receipt of his file from another Citizenship and Immigration Services (CIS) office, counsel submitted the petitioner's response to the NOID. In it counsel maintains that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position. Counsel submits no additional documentation.

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 Notice of Intent to Deny the petition, dated November 5, 2002; the director's denial dated June 2, 2003; (4) Form I-290B and supporting documentation, and (5) the petitioner's brief dated August 14, 2003, that contained the petitioner's response to the director's initial notice of intent to deny, dated November 26, 2002. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an in-house 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 notice of intent to deny. According to the job description submitted by the petitioner, the beneficiary's duties would primarily involve organizing and maintaining existing accounts among the petitioner, the petitioner's suppliers and its residents. With regard to specific tasks, the beneficiary would coordinate the timely performance of all accounting procedures to accomplish general accounting objectives, such as adjusting entries, and closing books; reconcile subsidiary ledger totals with general ledger balance for accounts receivable, fixed assets, accounts payable, notes payable and other real and nominal accounts; process bills for payment of loans, leases, taxes and licenses, insurance premiums, rent and other expenses; prepare the payroll; prepare monthly and weekly reports; and direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers.

The director found that the proffered position was not a specialty occupation and referred to the classification of bookkeepers and accounting clerks in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. Based on the *Handbook* information, the director determined that the petitioner did not establish that its business had an actual and practical need for the continued services of a full-time professional accountant. 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). Finally, the director determined that the beneficiary did not have a baccalaureate degree in a specific specialty that was relevant to the proffered position.

On appeal, counsel submits its response to the director's decision to deny the petition. In this document, counsel states that the job of accountant is recognized by Department of Labor reports such as the *Dictionary of Occupational Titles*, and *Occupational Outlook Handbook (Handbook)* as being a specialty occupation. Counsel also states that Board of Immigration Appeals (BIA) and federal court decisions have held that an accountant is a specialty occupation. Counsel also states that the director mischaracterizes the petitioner when he stated that the petitioner's income is marginal. Counsel points out that in the year 2002, the petitioner had gross annual revenue of \$973,291. Counsel also states that the petitioner has hundreds of accounts handled on a daily basis. Counsel states that the evidence of significant business conducted by the petitioner on a daily basis suggests the need for an in-house accountant, not a bookkeeper. Counsel also states that the *Handbook* classification of bookkeeper/accounting clerk is really that of a data entry technician.

With regard to the beneficiary's qualifications for the proffered position, counsel points out that the beneficiary has a bachelor of science in commerce with a major in accounting. Counsel refers to the

evaluation of her degree by an accredited evaluation service, and notes that the beneficiary finished seventeen courses in business, and accounting in her coursework.

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. While the *Handbook* does not refer to the use of part-time or full-time in-house accountants in small businesses, it does state that many accountants work for large accounting firms or are self-employed and do periodic accounting work for businesses. The *Handbook* is very clear with regard to the requirement for a bachelor's degree for entry into the accounting field.

The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. Upon review of the job duties, the proffered position appears to be that of a full-charge bookkeeper. The record does not appear sufficient to establish that the proffered position is that of an accountant. For example, although counsel and the petitioner mention that hundreds of accounts exist between the petitioner and suppliers and residents, the record is devoid of any information on the actual business operations of the petitioner, the types of accounts, or business expenditures that would establish the need for an in-house full-time accountant. The petition only reflects that the petitioner has eight employees with an undefined number of licensed homes that house an undefined number of developmentally disabled individuals. With regard to the gross revenues of \$973,291 noted on the 2001 tax return document submitted by counsel, the document also indicates that, minus deductions, the actual taxable income for the petitioner was \$45,261.

Contrary to counsel's assertions, a full-charge bookkeeper is not viewed as an entry-level technician. The 2004-2005 edition of the *Handbook* describes the work duties of bookkeeping, accounting, and auditing clerks, in the following manner:

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: "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." An associated *Handbook* classification of financial clerks does provide some information on necessary academic credentials for a bookkeeping position. The *Handbook* states:

For occupations such as bookkeepers, accounting clerks, and procurement clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions.

Without more persuasive evidence, the proffered position appears analogous to a position described as a full-charge bookkeeper. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, the petitioner submitted no further evidence. 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. According to the petitioner, it has been in business since 1994. Nevertheless, the record is devoid of any information as to any individuals who presently or previously performed the duties of the proffered position, and their academic credentials. Therefore the petitioner cannot meet this criterion.

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, some of the duties were generic in nature, i.e., timely performance of all accounting procedures, while others appear to be routine duties for any full-charge bookkeeping position, i.e., preparing payroll. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform in the proffered position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the issue of whether the petitioner established that the beneficiary is qualified to perform the duties of the proffered position, if it had been determined to be a specialty occupation, the record is not clear as to why the director found that the beneficiary did not qualify to perform the duties of an accountant. Although the educational equivalency document produced by Educational Assessment, Inc, Athens, Georgia, states that the beneficiary has the equivalent of a baccalaureate degree in business administration with a major in accounting, the beneficiary's college transcript states she has a bachelor's degree in commerce with a major in accounting. Counsel, in its response to the director's notice of intent to deny the petition, identifies sixteen courses from the transcript, either specifically in the accounting field, or closely related to it. Based on the documentation provided by the petitioner, it appears that the beneficiary does have a baccalaureate degree in a specific specialty closely related to accounting.

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. Although the petitioner has sustained that burden with regard to the beneficiary's qualifications, the petitioner has not sustained that burden with regard to whether the proffered position is a specialty occupation.

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