



U.S. Citizenship  
and Immigration  
Services

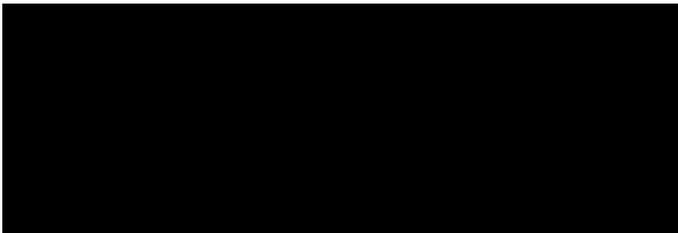


FILE: WAC 02 112 54299 Office: CALIFORNIA SERVICE CENTER Date:

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 clearly unwarranted  
disclosure of information

**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 is a manufacturer/seller of belts, patches, and labels that 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 a brief and 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 January 3, 2003 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail analyzing financial records; detailing assets, liabilities, and capital; preparing financial reports, balance sheets, profit and loss statements, and fund and cash flow statements; verifying the accuracy of financial documents by comparing them with book entries; preparing reports on the status of accounts; monitoring accounts receivable and payable; preparing payroll and withholding taxes; reconciling bank accounts; interpreting accounts and records to management; assisting management in tax and financial planning as well as budgeting; and coordinating bookkeeping and billing activities. The petitioner stated that a candidate must possess a bachelor's degree with a major in accounting, business administration, or finance.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the companies in the job announcements differed from the petitioner, a manufacturer and seller of belts, patches, and labels with two employees. The director found that the petitioner never submitted documentary evidence establishing that similar organizations required parallel positions or that its organization has unique and specific needs for the services of an accountant. The director emphasized that the petitioner must demonstrate a reasonable and credible offer of employment consistent with its needs. The petitioner never explained, the director stated, why it requires the services of an accountant.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel alleges that, given the dramatic expansion of the petitioner's business and the growing number of incorrect billing statements, it requires an in-house accountant. Counsel contends that the *Handbook's* description and educational requirements of an accountant parallel those of the proffered position. Counsel refers to the DOL's *Dictionary of Occupational Titles* to demonstrate that the proffered position is a specialty occupation. Pointing to the submitted job postings, counsel claims that they show that industry usually requires a bachelor's degree or its equivalent for an accountant position. Counsel states that the needs of the petitioner, a manufacturing business, are similar to those other organizations that require the services of an accountant to handle accounts and transactions, billing statements, and extensive financial recordkeeping. Citing to the court decision of *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980), counsel contends that a petitioner must show that a degree is a minimum realistic prerequisite for entry into a profession, and counsel states that a petitioner need not show that a business of a particular size or industry requires a degree. Referring to *Young China Daily vs. Chappel*, 742 F. Supp. 552 (N.D. Cal., 1989), counsel states that the court held that the size of a business operation bears no rational relationship to the need for a professional, and adds that the kind of industry also bears no rational relationship; counsel states that the focus must be on whether the position's duties are professional in nature. Counsel furthermore states that the court in *Young China Daily* stated that the fact that the petitioner has not required a bachelor's degree is irrelevant in a case involving a new business or a newly created position, and that the proffered position is newly created.

Finally, counsel mentions that the nature of the proffered position's duties is specialized and complex, requiring a specific bachelor's degree.

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 (DOL) *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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific SVP rating.

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 observes that in the appeal brief counsel alleged that the beneficiary would "monitor the company's budgeting, performance evaluation, [and] cost and assets management." Although the petitioner stated that the beneficiary would assist management in budgeting, it never stated that the beneficiary would monitor performance evaluations and cost and assets management. Because the petitioner never confirmed these duties, such statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The AAO will therefore disregard the duties of performance evaluation and cost and assets management.

The evidentiary record shows that the beneficiary will spend 20 percent of his time analyzing financial information, detailing assets, liabilities, capital and profit and loss statements; another 20 percent of his time analyzing financial documents for accuracy; about 15 percent of his time preparing reports on accounts and monitoring accounts receivables and payables; 20 percent of his time preparing payroll, withholding taxes, and paying taxes, and bank reconciliation; and 25 percent of his time interpreting accounts and records, assisting management in tax and financial planning, coordinating bookkeeping and billing, and setting up a computerized accounting system.

According to the *Handbook*, these duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss . . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account . . . . They may also review invoices and statements to ensure that all information is accurate and complete . . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory . . . .

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. Thus, the petitioner fails to establish the first criterion by proving that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

The director concluded correctly 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, we find that the range of the proffered position's duties and responsibilities do not rise to the level of those 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.

Counsel's claim that the court decision of *Matter of General Atomic Company* stated that a petitioner must show that a degree is a minimum realistic prerequisite for entry into a profession is accurate; however, the court decision never discussed whether a petitioner needed to show that a business of a particular size or industry required a degree.

The petitioner's evidence of nine job postings fails to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. In the nine postings, either the organizations seeking candidates are not similar in nature to the petitioning entity, a manufacturer/seller of belts, patches, and labels, or the postings do not reveal the identity of the organizations. For example, Southern California Gas Company provides gas; [REDACTED] posting represents a financial company; [REDACTED] in the insurance industry; AOC provides financial staffing; and TMP Worldwide, Inc. provides recruitment services. The companies in Santa Monica and Westlake Village are not described in the postings. Finally, the postings from [REDACTED] and Yollin & Associates are truncated; thus, the AAO cannot read their full descriptions. Consequently, the nine postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO disagrees with counsel's claim that the court in *Young China Daily* stated that the industry of the petitioner bears no rational relationship to whether a position qualifies as a specialty occupation. In the case, the court held that in determining whether a position is a specialty occupation, the irrelevant factors are the petitioner's size, the proffered position's salary, and the absence of a prior record of hiring professionals for the proffered position. The court never stated that the industry of the petitioner was irrelevant.

There is no evidence in the record that would establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. 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. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks – positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. The submitted invoices merely indicated items ordered by customers. 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.