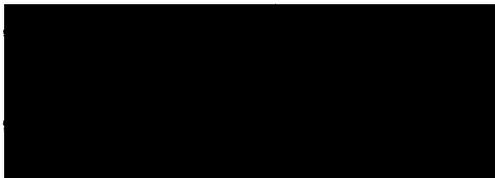




U.S. Citizenship
and Immigration
Services



FILE: WAC 03 035 51513 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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 is engaged in the business of real estate leasing and investments in the San Francisco Bay area. In order to employ the beneficiary as an accountant, the petitioner endeavors to classify her 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 petitioner had not established that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director noted that the proffered position comports with that of the bookkeeper, accounting clerk, and auditing clerk occupation as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the *Handbook* indicates that employers do not normally require a bachelor's degree in a particular specialty for that occupation.

On appeal, counsel contends that the director has ignored evidence of record which establishes that the beneficiary would be performing the duties of a genuine accountant and that the proffered position therefore qualifies as a specialty occupation under all of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO has decided that the director was correct in denying the petition. In reaching this decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, and counsel's brief on appeal.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) explicitly recognizes that an accountant position, the performance of which requires at least a baccalaureate or the equivalent in accounting, is a specialty occupation. Accordingly, the issue at this stage of the proceeding is whether the petitioner has established that it is proffering such a position.

The AAO considered and based its decision on the complete body of evidence that the petitioner has presented about the proffered position, including the information about the duties that is related in: the Form I-129; counsel’s letter of reply to the RFE; the documents submitted with that letter of reply; and counsel’s brief on appeal, with its comments about the proposed duties. The AAO will not recount all of this information. However, the following paragraph, which the appellate brief quotes in full and attributes to the petitioner’s RFE response,¹ is fairly representative of counsel’s contention about the specialty occupation status of the proffered position:

The position is much more complex than that of a bookkeeper or that of an accounting clerk, both of which do not require a bachelor’s degree. Bookkeepers and accounting clerks merely record debits and credits, complete balance sheets and ledgers, and or post details of transactions (see [the 2000-2001 edition of the *Handbook*] at 318). The position proffered requires more than that. They [sic] involve a combined application of the areas of accounting, management, mathematics, economics, and statistics. These are courses that are taken on a bachelor level or acquired through working in the budgeting, accounting, or financial field. Thus, nothing less than a bachelor’s degree is required to perform the duties the position entails. Bookkeepers and accounting clerks cannot perform the above-mentioned functions because they do not have the knowledge of advanced accounting principles that graduates of a bachelor’s degrees [sic] have.

Counsel’s elaborations on the record, on appeal and elsewhere in his submissions, have no persuasive impact unless the evidence in the record substantiates them. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the AAO has discounted any assertions

¹ Although referred to as part of the petitioner’s RFE response, this paragraph appears in none of the documents in the record of this proceeding.

or conclusions of counsel that are not supported by evidence in the record of this proceeding. As will be discussed below, the evidence does not substantiate counsel's contention that the proffered position is an accountant position that requires at least a bachelor's degree. In terms of Section 214(i)(1) of the Act, *supra*, the petitioner has not established that the proffered position requires both (1) theoretical and practical application of a body of highly specialized accounting knowledge and (2) the attainment of at least a bachelor's degree (or its equivalent) in accounting.

Before the evidence is addressed, it should be noted that the AAO accorded no weight to counsel's assertion, on the Form I-290B, that "[a] similar petition for the same position had been filed and approved by [CIS] in the past." Counsel does not cite any precedent decisions. While 8 C.F.R. § 103.3(c) provides that CIS precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Throughout the record, the proffered position and its duties are described in general terms that are generic to accounting-type positions in general but convey no meaningful details about the actual, employer-specific tasks that would occupy the beneficiary. The petitioner, therefore, has not provided CIS with sufficient information to determine that actual performance would require the application of accounting knowledge on a level that is associated with at least a baccalaureate degree or equivalent in accounting. Lacking an adequate factual basis in the record, the AAO will not speculate on this matter. The burden of proof in this proceeding rests solely with the petitioner (Section 291 of the Act, 8 U.S.C. § 1361), and the petitioner has not sustained that burden.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties.

Counsel contends that an accountant position has been proffered. However, the record lacks persuasive evidence that the beneficiary would perform specific tasks that require an accountant's knowledge of accounting principles.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The *Handbook* indicates that employers require at least a bachelor's degree in accounting for accountant positions. However, the *Handbook* also indicates that there are positions that may require some knowledge of accounting principles but less than the highly specialized knowledge associated with a baccalaureate degree or equivalent in accounting. *See, for instance, the 2004-2005 Handbook's* information on financial clerks (pages 433-435) and bookkeeping, accounting, and auditing clerks (pages 437, 438). For example, at page 437, the *Handbook* states:

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.

[Italics in the original.]

The abstract and generic nature of the evidence, discussed earlier, is insufficient to establish that the proffered position comports with an accountant position or any other position which normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The record abounds with duty descriptions that are too generalized to demonstrate that the beneficiary would actually be working as an accountant or in any other occupational specialty that would require at least a baccalaureate degree, or the equivalent, in a specific specialty. For instance, the petitioner's letter of support asserts, without any demonstrative examples, that a bachelor's degree in accounting is required because of "the complexity of the accounts and volume of accounts that are maintained" and "the precision and organizational nature of the job duties." The letter also states that the beneficiary would "prepare the quarterly and yearly tax information and provide tax planning advice," but it provides no information about the level of complexity or accounting technicalities that may be involved. Likewise, the letter states that the beneficiary would "apply principle[s] of accounting to analyze financial information and prepare financial reports," but it supplies no details about the nature of the information to be analyzed or the reports that are to be prepared. The "Percentage of Time to Be Spent On Each Duty" section of counsel's letter of reply to the RFE also includes abstract descriptions of the proposed duties, such as: "intensive analysis of the company's past and present financial transactions to generate relevant information regarding common trends as well as variance in terms of generated revenues and overhead expenses"; preparation of "a comprehensive report on the result of [the beneficiary's] analysis and assessment on the comparative studies of the past and present financial reports"; and assistance to the petitioner "in reviewing and in every aspect of the business operations to determine ways to minimize operational costs and yet still offer high quality of service to the customer."

The record also contains less abstract descriptions of the proposed duties, such as: preparation of payroll statements and deductions and monthly profit and loss reports; direction of "the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, assets and income into the general ledger;" and preparation of Federal and state tax payments. However, even these descriptions are just specific enough to indicate that the beneficiary would require some knowledge of accounting principles. These descriptions, however, do not establish that the accounting knowledge would have to be on a par with what an accountant possesses by virtue of at least a baccalaureate degree or the equivalent in accounting.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the petitioner has not established that its proffered position is an accountant position or any other type for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record does not contain letters or affidavits from other individuals or firms in the petitioner's industry. Finally, it is noted that while counsel's reply to the RFE (at page 2) referred to "enclosed copies" of Internet advertisements, none are included in the record of the proceeding.

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not establish such complexity or uniqueness.

Next, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is relevant to situations where the petitioner establishes that it normally requires at least a bachelor's degree in a specific specialty, because of the performance demands of the proffered position. In fact, the record indicates that this is the first time that the petitioner is proffering the in-house accountant position.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in accounting or any other specific specialty. The record is too limited to generic and abstract descriptions of the proposed duties to establish that their actual performance would require that level of highly specialized accounting knowledge that is associated with at least a baccalaureate degree in accounting.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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