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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 045 53580 Office: VERMONT SERVICE CENTER Date: **SEP 30 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:  
[Redacted]

**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 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 wall artistry. 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 a brief and additional 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 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 examining documents to verify accuracy of computations and applications of acceptable accounting standards; monitoring the processing of account receivables and accounts payable; reconciling bank and general ledger accounts; preparing analysis and reports for internal and external use, and federal and state tax returns; managing cash flow and investments; and other general accounting duties. The petitioner stated that a candidate must possess a bachelor's degree in accounting or a related field.

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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) showed that the duties of the proffered position were performed by a bookkeeper, a position that does not require a bachelor's degree for entry into the occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel contends that the *Handbook* describes the proffered position's duties as performed by accountants. Counsel submits evidence of the petitioner's pending trademarks to show that the company's business is growing and expanding into distributorship and instruction, and states that the beneficiary will handle the costing, inventory, and revenue of this growth with a computerized system. Counsel contends that the submitted evidence shows that the particular position is so complex or unique that it can be performed only by an individual with a degree. Counsel points to the submitted expert opinion of Assistant Professor Andrew C. Spieler of Frank G. Zarb School of Business, Hofstra University, to contend that the proffered position qualifies as 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 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 *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 nearly all of the proffered position's duties are performed by an accountant as described in the *Occupational Information Network (O\*Net)*. Nonetheless, the *O\*Net* 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 requirement for entry into the occupation. The *O\*Net* provides 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 its duties are similar to those described in the *O\*Net*.

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.

A review of the *Handbook* reveals that the proffered position's duties are indeed 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 . . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The *Handbook's* duties certainly encompass the proffered position's responsibilities. The petitioner stated that the beneficiary will "verify accuracy of computations and applications of acceptable accounting standards," and perform "bank and general ledger account reconciliation." Similarly, advanced accounting clerks and auditing clerks "total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account"; "review invoices and statements to ensure that all information is accurate and complete"; and check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. The beneficiary will "[m]onitor account receivables and accounts payable process"; likewise,

bookkeeping, accounting, and auditing clerks “update and maintain” a company’s “accounts payable and receivable.” The *Handbook* notes the growing use of financial software to enter and manipulate data.

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 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, 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.

Counsel points to the expert opinion of Assistant Professor [REDACTED] to establish that the proffered position is a specialty occupation [REDACTED] states that the proffered position is a professional-level accounting position; that the duties correspond with those typically associated with such professional-level positions; and that an accountant is a specialty occupation requiring baccalaureate-level training in business administration, accounting, or a related field. According to [REDACTED] it is a common industry practice for a business interested in maintaining accurate financial records and ensuring the proper reconciliation of internal accounts to hire an accountant with a baccalaureate-level education and/or professional background in business administration, accounting, or a related field.

Although relevant, the weight of [REDACTED] assertions is diminished since they are 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).

The second criterion requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the particular position is so complex or unique that it can be performed only by an individual with a degree. Counsel contends that the submitted evidence such as tax records, invoices, the job description, the trademark registration, the *O\*Net*, Mr. Spieler's evaluation, and evidence about the Academy of Wall Artistry demonstrate that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The tax records, invoices, trademark registration, and evidence about the Academy of Wall Artistry are not sufficient to 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. The Form 1040 for the 2001 tax year indicates the petitioner earned only \$163,134, and the invoices merely describe simple projects such as applying faux texture, plaster, and paint. The evidence of the trademark registration and the Academy of Wall Artistry merely demonstrate that the petitioner anticipates expansion and growth. None of the described evidence establishes that the proffered position is so complex or unique as to require a candidate with a bachelor's degree. The AAO has already discussed the shortcomings of Mr. [REDACTED] assertions.

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. 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.