

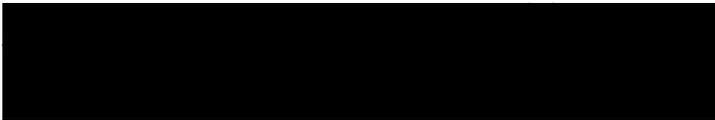


U.S. Citizenship
and Immigration
Services



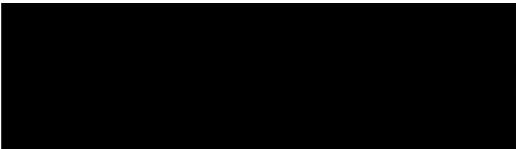
FILE: WAC 03 056 50098 Office: CALIFORNIA SERVICE CENTER Date:

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 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 residential elder care facility that seeks to employ the beneficiary as an accountant. The petitioner 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 submitted a timely Form I-290B on which he indicated that a brief or other evidence would be sent to the AAO within thirty days. As of this date, however, the AAO has received no additional documentation; thus, the record is complete.

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 I-129 petition; the petitioner's letter in support of the petition; 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; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, profit and loss statements, and other reports; auditing contracts; and participating in conferences with upper management. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree. The petitioner did not explicitly state that the degree must be in accounting, but, based on the record, this appears to be the petitioner's requirement.

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 noted that the petitioner failed to provide sufficient evidence that it had a bona fide specialty occupation position available for the beneficiary. On appeal, counsel states that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree or higher. As this is the only legal point counsel brings out on appeal, the AAO will examine the fourth criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) require the petitioner to establish that 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, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in accounting. The duties listed on the record resemble those of a bookkeeper or accounting clerk, per the description found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. According to the *Handbook*, in small firms such as the petitioner's, bookkeepers may handle all financial records and transactions, as well as payroll and billing duties. The record contains no evidence that an experienced bookkeeper could not perform the duties ascribed to the instant position. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

A review of the record reveals no evidence that demonstrates any of the other three criteria in this section; thus, 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.