

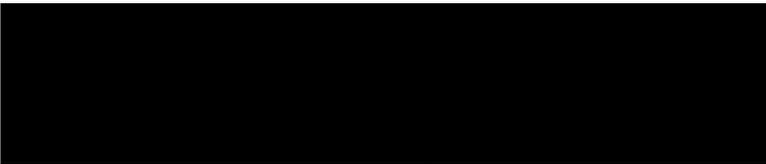
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 11 2005

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the California 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 home health care business, providing skilled care to homebound adult patients. It seeks to employ the beneficiary as an accountant/financial analyst. The director denied the petition because he determined the position did not meet any of the criteria required for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) counsel's response to the director's request for evidence; and (3) Form I-290B, with a letter from counsel. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant/financial analyst. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s June 15, 2003 letter of support submitted with the Form I-129; and counsel’s October 17, 2003 response to the director’s request for evidence. In its letter of support, the petitioner stated that it needed the services of an accountant/financial analyst to help it prepare and analyze its financial statements and to determine the profitability of its current operations and plans for expansion, based on a “thorough analysis of [its] main books and accounts.” It described the specific duties to be performed by the beneficiary as follows:

- Establish, modify, document, and coordinate the implementation of a computerized accounting system to automate accounting-related tasks;
- Perform accounting functions including receivables and payables, posting business data, reconciling financial reports, and controlling inventory, audit services for a thorough analysis of individual transactions recorded;
- Submit reports on a regular basis to apprise management of analysis results and the petitioner’s financial status; and
- Perform related administrative duties, such as informing management of status and availability of funds, assisting management with major budget components, assisting in the development of annual operating plans, making recommendations to management based on accounting records, and monitoring financial operations and significant financial activities.

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.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first turns 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; and 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

considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director found the duties of the proffered position to more closely resemble those of bookkeeping, accounting and auditing clerks, as described in the 2002-2003 edition of the DOL *Handbook*, and concluded that a baccalaureate or higher degree, or its equivalent, was not required to perform those duties. In its own review of the duties of the proffered position, the AAO has relied upon the 2004-2005 edition of the *Handbook*, reviewing the occupational titles of accountants, financial analysts, and bookkeeping, accounting and auditing clerks.

As stated in the *Handbook*, at pages 68-69, specific job duties vary widely among the four major fields of accounting: public, management, government and internal. The category closest to the proffered position is that of management or private accountants who

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.

Few of the management accountant duties described in the *Handbook* apply to the petitioner's position as it has been described by the petitioner and counsel. The stated duties and responsibilities of the petitioner's position do not meet the complexity or scope of responsibility normally required of a management accountant. While management accountants are certainly required to record and analyze the financial information of the companies for which they work, their responsibilities extend beyond these requirements, being much broader and more complex than those outlined in the petitioner's job description. The duties of the proffered position are not on a level with those carried out by management accountants.

The AAO next turns to the *Handbook's* discussion of financial analysts on pages 80-81, which states:

Financial analysts . . . provide analysis and guidance to businesses and individuals to help them with their investment decisions *Financial analysts* assess the economic performance of companies and industries for firms and institutions with money to invest

[F]inancial analysts read company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates in order to determine a company's value and project future earnings They often meet with company officials to gain a better insight into a company's prospects and to determine the company's managerial effectiveness. Usually, financial analysts study an entire industry

Again, this occupation's responsibilities are significantly different than those described by the petitioner with regard to the proffered position. They impose a broader, significantly more complex set of analytical duties than do the responsibilities attached to the petitioner's employment. Accordingly, the AAO concludes that the duties of the proffered position are also not on a level with those of a financial analyst.

Instead, it would appear that the proffered position's duties are, as already noted by the director, more aligned with the duties performed by bookkeeping, accounting, and auditing clerks who, as the *Handbook* reports, are not normally required to possess a bachelor's degree, but need only a high school diploma to seek entry-level employment. The record shows that the beneficiary would largely be responsible for the petitioner's financial recordkeeping -- implementing a computerized accounting system, performing financial record-keeping functions, and providing the petitioner's with regular financial reports -- duties that closely resemble those of bookkeepers, accounting and auditing clerks as described in the *Handbook*, page 437:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. 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

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 They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts

In response to the director's request for evidence, counsel stated that the petitioner would require the beneficiary to analyze the petitioner's financial information and budget requirements in order to forecast its current and future business position. However, a review of the specific duties listed by the petitioner at the time of filing leads the AAO to conclude that the analysis to which the petitioner refers is more closely aligned to the financial reporting done by bookkeepers, as described above, than it is to the financial analysis performed by management accountants or financial analysts. Further, the petitioner's specific language at the time of filing was that it required the beneficiary's services to "help the company prepare and analyze its financial statements and reports and also to determine the profitability of [the company's] present operations and prospective expansion plans." It did not state that the beneficiary would be expected to conduct these analyses and make these profitability determinations independently, but to assist the petitioner with these activities. In any event, the evidence of record about financial reporting and analysis is too generic and generalized to establish a need for at least a bachelor's degree level of knowledge in accounting.

On appeal, counsel contends that these same analytical duties, as well as the beneficiary's responsibility for the creation and implementation of an accounting system, the internal audit of posted accounting data, and the preparation of financial statements are beyond the capabilities of a bookkeeper. The AAO does not agree. It finds the profession of bookkeeper to encompass a broad range of potentially complex responsibilities. The *Handbook* clearly indicates that the maintenance of accounting systems is a standard responsibility of bookkeepers, as is the auditing of financial records and the preparation of financial reports and summaries for supervisors and managers. Further, the AAO notes the *Handbook's* discussion of the job outlook for bookkeepers, on page 438, which states that "full-charge bookkeepers" now perform many of the same duties as accountants. It concludes, therefore, that, to the extent that they are described in the record, the duties of the proffered position, including those specifically discussed by counsel on appeal, substantially comport with the position of a full-charge bookkeeper. As the occupation of bookkeeping, accounting and auditing clerks does not require those seeking employment to have a baccalaureate or higher degree, or its equivalent, the AAO finds that the proffered position does not qualify as a specialty occupation under the first requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the position as a specialty occupation under the second criterion -- that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty -- the petitioner has submitted a number of Internet job postings, 15 at the time of filing and 3 in response to the director's request for evidence. However, these announcements do not establish that the petitioner's degree requirement is the norm within its industry.

The information provided in the postings does not establish that the jobs advertised constitute employment that is parallel to the proffered position or come from organizations similar to the petitioner, as required at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Of the 18 postings, three appear to come from the health care industry. However, there is no indication that two of these businesses provide home health care services or that the size and scope of their business operations are similar to those of the petitioner. The third posting suggests that the advertiser is in the home health care business, but provides no information as to the nature of its operations or the size and scope of those operations. Further, none of the announcements describe positions parallel to the proffered position. Either they describe significantly different duties from those of the proffered position, or they do not offer enough of a description to make any determination as to what specific tasks are to be performed. Accordingly, these job announcements cannot establish that the degree imposed on the beneficiary by the petitioner is the norm within the home health care industry. Furthermore, the announcements are too few to establish an industry-wide practice.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; 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 determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the employment histories, including names and dates of employment, of

those employees with degrees who previously held the position, and copies of those employees' diplomas. At the time of filing, the petitioner submitted a copy of its job announcement for the proffered position, which notes its requirement of a bachelor's degree in business administration, accounting, finance or its equivalent. However, this announcement, as it relates only to the proffered position, cannot serve as evidence of the petitioner's past hiring practices. Although the petitioner, at the time of filing, stated that its proffered position met all of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO finds no evidence in the record regarding the petitioner's employment history related to the proffered position. Accordingly, it concludes that the petitioner cannot establish that its proffered position qualifies as a specialty occupation based on its normal hiring practices.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position 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. At the time of filing, the petitioner specifically asserted the duties of its proffered position to be both specialized and complex, citing as proof the need for the beneficiary to apply business and financial knowledge normally associated with the completion of a baccalaureate degree, use logic and analysis to assess different financial and accounting systems and procedures, generate different financial and accounting approaches, and evaluate the success of a financial strategy or accounts management policy.

In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the specific duties of the proffered position to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a full-charge bookkeeper or, perhaps, represent an amalgam of jobs that require different skills and qualifications. It finds no evidence to support the claims made by the petitioner regarding the specialization and complexity of its position. The specific duties of the proffered position do not appear to require greater knowledge or skill than that normally needed by bookkeepers who routinely work in demanding and complex businesses. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a full-charge bookkeeper. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, 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.