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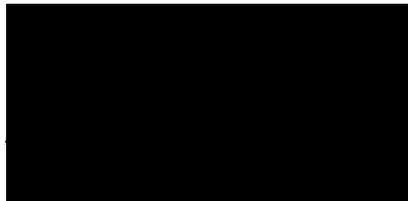
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FILE: WAC 02 256 50229 Office: CALIFORNIA SERVICE CENTER Date: **APR 20 2005**

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 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 residential care facility that seeks to employ the beneficiary as a part-time 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 states that he will send a brief and/or evidence to the AAU within 30 days. We note that the record does not contain this. The record is therefore 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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing and maintaining client accounts in a modern accounting system; converting the current manual accounting system and setting up a computerized system; operating and maintaining the new system; assisting in implementing the business plan and new services; providing advice and technical assistance in preparing annual budgets; preparing and reviewing proposed operating and financial plans; examining past and current budgets and monitoring the operating budget to determine if allocated funds have been spent as specified; projecting budget needs for long-range planning; and assisting in developing procedural guidelines and policies governing the development, formulation, and maintenance of the budget. The petitioner stated that the proposed position requires a bachelor's degree or the equivalent in accounting or a related field. The petitioner's December 9, 2003 and June 2, 2003 letters elaborate on the duties of the proposed position.

The director stated that some of the petitioner's duties require theoretical and practical application of highly specialized knowledge obtained through the attainment of a bachelor's degree, but the director was not convinced that the petitioner demonstrated sufficient organizational complexity. The daily accounting activities, the director stated, lack complexity to establish a realistic need for an in-house accountant. Although the director agreed that all businesses require an accountant to ensure that accounting practices follow general accepted accounting principles, he stated that not all businesses require an on-staff accountant; instead they hire the services of an accountant on an as-needed basis, to ensure their recordkeeping is proper, and they hire a bookkeeper/accounting clerk for financial transactions and recordkeeping. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the *Handbook* reveals that the duties of the proposed position are similar to bookkeeping, accounting, and auditing clerks, which are occupations that do not require a baccalaureate degree. The director stated that the size of a company or whether it is newly created is not necessarily the determining factor in whether a job qualifies as a specialty occupation. The director stated that because the petitioner's organizational chart shows no position for a bookkeeper or an accounting clerk, the beneficiary would perform these duties.

On appeal, counsel states that the beneficiary will spend 80 percent of her time performing financial analysis, cost management, auditing, and budgeting; only 20 percent is devoted to recording or bookkeeping duties. Counsel states that the proposed position is analogous to a management accountant as the occupation is described in the *Handbook*. Referring to the *Occupational Network Information (O\*Net)* and the Occupational Employment Statistics program (*OES* program), counsel asserts that they show that the proposed position is a specialty occupation. Counsel states that the director assumes that the petitioner cannot employ a part-time professional accountant because it is a small company.

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 is the normal minimum requirement for entry into the particular position; 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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Counsel states that the proposed position qualifies as a specialty occupation based on the information in the *O\*Net* and the OES program. The *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that 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. The OES program produces employment and wage estimates for over 700 occupations; it does not discuss the educational requirements of occupations. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information in the *O\*Net* and the OES program.

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.

The *Handbook* explains that 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, and cost 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.

Some of the duties described in the *Handbook* do not apply to the proposed 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 provide performance evaluation and asset management. In light of this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of a position requiring baccalaureate-level education. 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 proposed position.

Many of the proposed position's duties are performed by bookkeeping, accounting, auditing and financial clerks. The petitioner's June 2, 2003 letter indicated that the beneficiary's duties entail the following: 20 percent - recording, 10 percent - budgeting, and 30 percent - financial analysis. As described in the June 2, 2003 letter, these duties are encompassed within those of bookkeeping, accounting, and auditing clerks. The *Handbook* indicates:

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.

Similar to the beneficiary who will prepare and manage the general ledger, accounts payable, accounts receivable, billing, and payroll transactions; prepare, coordinate, and consolidate financial statements; prepare monthly analysis and support for business operations; prepare income statements, balance sheets, and cash flow forecasts, bookkeeping, accounting, and auditing clerks verify records of transactions posted by other workers, prepare payroll, handle accounts payable and accounts receivable, produce financial statements, and prepare reports and summaries for supervisors and managers. Consequently, about 60 percent of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks.

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.<sup>1</sup>

The AAO notes that the record reflects that the petitioner has two employees and an anticipated annual gross income of \$65,000. The level of income generated by the petitioner has a substantial and direct bearing on the scope and depth of the proposed duties. Responsibility for income of only \$65,000 differs dramatically from responsibility associated with a far larger income or from a firm that is responsible for accounting work of many clients.

Based on the above discussion, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submitted no evidence to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or show that the particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. And as discussed already, the *Handbook* reveals that 60 percent of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, which are occupations that do not require baccalaureate-level education.

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).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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. As discussed in this decision, 60 percent of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require baccalaureate-level education.

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.

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<sup>1</sup> The website from Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://www.skylinecollege.net)) reflects that an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. The AAO notes that the website information undermines counsel's assertion that financial clerks have neither training nor an understanding about the GAAP.

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.