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FILE: WAC 04 090 53152 Office: CALIFORNIA SERVICE CENTER Date: AUG 01 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.

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 operates three restaurants and seeks to employ the beneficiary as a full-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 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) counsel'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 full-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 counsel's response to the director's request for evidence. According to this evidence, the beneficiary would be (1) applying principles of accounting to analyze financial information and preparing financial reports for Thai Villa, including: analyzing financial information to forecast business, industry, and economics conditions, for use in making investment decisions for the company's inventory and product sales; developing and analyzing results with original projections and goals, as well as advising and educating owner on spending within budget and goals (20%); (2) compiling and analyzing financial information detailing assets, liabilities and capital for company operations, including: advising management on matters such as effective use of resources and assumptions underlying budget forecasts and interpreting product budgets to operations, reviewing time frames, funding limitations, procedures, staffing, and allotment of available resources for the company (20%); (3) preparing balance sheets, profit and loss statements and other reports to summarize current and projected financial positions of the company, including: updating, maintaining and documenting financial statements, database, cash flow and sales projections for each quarter; developing an on-going cost savings strategy by tracking costs and vendor/client invoicing to ensure contracts are being paid and complied with (20%); (4) devising and installing special computer accounting systems and related procedures conducting survey of operations to ascertain needs of establishments setting up classification of accounts and organizing accounting procedures and machine methods support (15%); (5) documenting business transactions between food and beverage vendors and the company, including auditing contracts, orders, and vouchers, and preparing reports to substantiate individual transactions prior to any settlements (10%); (6) establishing and modifying, documenting, and coordinating implementation of account and accounting control procedures to ensure compliance and fulfillment of contracts with customers and vendors (10%); and (7) directing and coordinating the activities of the business to ensure products and supplies are available for service (5%).

The petitioner indicated that in order to perform the duties the beneficiary must have a bachelor's degree.

The director issued a request for evidence. The director requested a more detailed description of the work done. The director requested an organizational chart and evidence that the petitioner has a past practice of hiring persons with a baccalaureate degree.

In response, the petitioner augmented the job description and stated, "because of the complex nature of our business, it is imperative that we have trained accountants in the latest techniques and theories." The petitioner indicated that it had assets valued at approximately \$497,000. The petitioner submitted Federal Income Tax Returns for tax years 2001 and 2002. The petitioner has 20 employees and had gross sales of over \$2.4 million for tax year 2002. The petitioner noted that it owns and manages three restaurants. The petitioner indicated that the beneficiary would be coordinating the installation of accounting software to integrate all three restaurants' payroll, inventory and financial analysis. The petitioner submitted a copy of its balance sheet and indicated that this is a sample of the work to be performed. The organizational chart included a current staff accountant who is in H-1B status.

The director determined that the proffered position was not a specialty occupation. The director found that the primary duties are that of an advanced bookkeeper or accounting clerk. The director indicated that the submitted information did not indicate that the petitioner normally requires applicants for the position to

possess a baccalaureate or higher degree in the field. Thus, the director determined that the proffered position was not a specialty occupation.

On appeal, counsel contends that the position of accountant qualifies as a professional or specialty occupation. Counsel submits internet postings to support her assertion that similar organizations and restaurants require a degree for in-house accountants. Counsel contends that the petitioner normally requires a degree for the position of accountant based on historical practices. Counsel states that the nature of duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a degree because the beneficiary will be responsible for internal auditing and electronic accounting procedures and controls.

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 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 Department of Labor's *Occupational Outlook Handbook (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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director's reference to the *Handbook's* description of a management accountant underscores the differences between the proffered position and a management accountant. While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

The *Handbook* states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The record shows that the petitioner operates as a restaurant management company managing three restaurants and indicated on the Form I-129 a gross annual income of \$2.4 million dollars. Responsibility for income of \$2.4 million differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. The petitioner's level of income has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The AAO notes that the petitioner already employs one accountant on its staff.

Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. This statement is not persuasive. The *Handbook* reveals that the director properly concluded that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. 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 petitioner stated that the beneficiary will prepare balance sheets, profit and loss statements and other reports to summarize current and projected financial positions of the company, including: updating, maintaining and documenting, financial statements, database, cash flow and sales projections for each quarter; developing an on-going cost savings strategy by tracking costs and vendor/client invoicing to ensure contracts are being paid and complied with. Such duties are performed by bookkeeping, accounting, and auditing

clerks who update and maintain accounting records that tabulate profit and loss reports, verify records of transactions, reconcile billing vouchers, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll.

Counsel states that the beneficiary would be responsible for providing and advising management on matters such as effective use of resources and assumptions underlying budget forecasts and interpreting product budgets to operations, reviewing time frames, funding limitations, procedures, staffing, and allotment of available resources for the company. As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports 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>

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish 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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submitted internet job postings. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) plainly states that the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner, therefore, must demonstrate that organizations similar to it have positions that are parallel to its position and furthermore that such positions have the same degree requirement. The postings are not persuasive for various reasons. Fountainhead staffing is searching for an accountant for a hospitality/restaurant resort company. The petitioner has not demonstrated that it is similar to a resort company in purpose, income, and staffing. Another advertisement for a staffing agency indicates that it is searching for an accountant to place in the entertainment, restaurant and real estate industry. This is insufficient information to determine if the organization is similar to the petitioner. The third internet ad is for a national chain of restaurants. The petitioner has not demonstrated that these organizations are similar to it. The job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that only an individual with a degree can perform it. Again, the *Handbook* reveals that the proffered position is performed

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://www.skylinecollege.net)), 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, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision making.

by bookkeepers and accounting clerks, positions which do not require a bachelor's degree in a specific specialty.

The petitioner has not established that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The petitioner states that it currently employs a staff accountant and provides the H-1B approval and educational evaluation for Nutthanan Noppawong, and that it previously employed an accountant with a bachelor's degree and provides a copy of the H-1B approval notice and college degree for Orawicha Suraniwongse. However, the petitioner has not established that the proffered position is that of an accountant. As stated in the discussion above, the proffered position appears to be that of a financial clerk, accounting clerk, or bookkeeping clerk. Thus, that the petitioner has also employed an accountant in an accountant position is not relevant.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. A review of the evidence indicates that the duties and responsibilities do not meet the complexity or scope of responsibility normally required of an accountant. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.