



U.S. Citizenship
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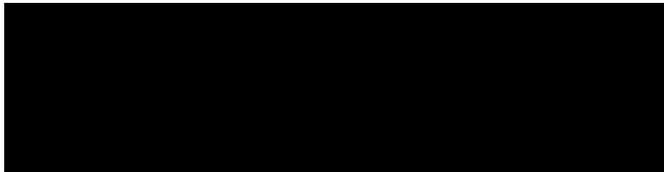


FILE: WAC 04 063 51808 Office: CALIFORNIA SERVICE CENTER Date: AUG 01 2005

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 engaged in the business of owning and managing commercial real estate and indicates that it has three employees 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 supporting documents.

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 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 counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for accounts receivables, including monthly charge posting in Yardi, monitoring collection and rent escalations, tenant billing, payment posting in Yardi, bank deposit and generating recovery and delinquency reports; responsible for accounts payables, including review of accuracy of bill, posting invoices in Yardi, check writing and posting automatic payment adjustments, generating check register, payroll processing and monitoring loan payment; bank account reconciliation, including checkbook balance maintenance, verification of receipts against deposits and automatic draft adjustments against debits; performing office administration, including systemic filing, monitoring and purchasing of supplies and file custody; preparing periodic reports, including financial reports as income statement, balance sheet, quarterly and annual reports, explanation of major, capitalized or amortized expenses and other reports required by property owners; preparing other reports, including those required to comply with IRS notices and other legal notices; performing annual budgeting, including estimating expected operating expenses for managed properties and estimating pro-rata share of tenants in each property; responsible for tenant relations, including requests for repairs, lease renewal and cancellation, sublease agreements, monitoring tenant maintenance compliance, and submission of required documents per lease provisions; managing property maintenance and vendor relations, including property inspection, negotiating service contracts, acquiring bids for repairs, issuance of work orders, monitoring service performance and completion and in-charge of annual renewal of property insurance. The petitioner indicated that the minimum hiring requirement for this position is a Bachelor's degree in Accounting or a related field.

The director requested additional evidence, specifically a more detailed description of the work done, including the percentage of time to be spent on each duty. The director requested copies of the petitioner's federal incomes taxes, quarterly wage reports and organizational chart.

In response, the petitioner indicated that it had five employees including the beneficiary. The petitioner provided federal income tax Form 1065 with attachments that indicated total gross rents of \$2,591,126 for tax year 2002. The petitioner indicated that the percentage of time required for each duty of the proffered position is as follows: performing implementation of AME accounting software, including the installation and set-up of all modules required by accounting, the development of procedures to be used by this new system, the training of staff on the system, and the formatting of several financial reports (6% of time); performing all accounting functions to include preparation of journal entries and/or recording of accounting transactions (6% of time); maintaining petty cash, deposits, bank reconciliations and trial balance (5% of time); administering general ledger, fund coding and checkbook maintenance for agency accounts (7% of time); managing multiple accounts for the company with commercial property in several cities (5% of time); preparing, monitoring, and maintaining computerized accounts payables; generating and mailing A/P checks (4% of time); maintaining computerized accounts receivables; receiving and depositing monthly rent checks (5% of time); phone collection of overdue accounts, generating invoices and statements (4% of time); calculating payroll deductions and processing payroll; monitoring payroll taxes for accuracy and on-time payments (5% of time); responsible for monthly and quarterly and year end payroll and sales tax forms (6% of time); preparing monthly and quarterly accounting reports and schedules (7% of time); preparing comparison of expense to budget reports of executives (5% of time); providing pertinent information and documents and coordinates with an independent tax preparer for the preparation of tax returns (3% of time); communicating with other departments, field personnel, and clients (5% of time); negotiating lease and rental

agreements: overseeing capital improvements, maintenance and modifications for three rental properties (6% of time); preparing yearly cash budgets for each property (4% of time); responsible for the design and consults on building renovations; soliciting and assessing bids; hiring and overseeing subcontractors (4% of time); serving as investment appraiser, traveling to various property sites and preparing financial analyses and feasibility studies of possible property acquisitions (5% of time); and performing other functions as may be assigned (7% of time).

The director determined that the proffered position was not a specialty occupation. The director found that the type of duties the petitioner ascribed to the beneficiary fall within the scope of a bookkeeper or accounting clerk position rather than a management accounting position. The director found that the duties suggest that record keeping rather than management accounting will consume the vast majority of the beneficiary's time. The director noted that the majority of the proposed duties reflect those normally performed by bookkeepers and other financial assistants with less complexity than the job duties expected of bone fide accountants. Furthermore, the director noted that many of the duties are not related to either bookkeeping or accounting. The director stated that the petitioner has not shown that a bachelor's degree or its equivalent is required by the position being offered to the beneficiary.

On appeal, counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* and states that the job duties of the proffered position most closely resemble those of Accountant found in the *DOT*. Counsel also refers to the *Occupational Information Network (O*NET)* classification of accountant. Counsel contends that the proffered position's duties are distinguishable from those of a bookkeeper. Counsel emphasizes that the majority of the duties of the proffered position resemble those of an accountant.

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)).

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.

A review of the *Handbook* reveals 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, 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 budgeting, performance evaluation, cost management, and asset management. Given this significant dissimilarity, the scope and complexity of the beneficiary'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.

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 petitioner indicated that it had 3 employees and grossed over \$2.5 million dollars in rent from its real estate. The petitioner's organizational chart indicates that its employees include a president, vice president, property manager, maintenance supervisor and the beneficiary. The petitioner's level of income has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The petitioner has not

provided evidence that supports its contention that due to the size and complexity of its business the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation.

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 would perform all accounting functions including preparation of journal entries and/or recording of accounting transactions; maintaining petty cash, deposits, bank reconciliations and trial balance, and preparing monthly and quarterly accounting reports and schedules.

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.¹

¹ According to the website for Skyline College, a community college located in San Mateo, California, (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.

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 submits various internet postings for the position of accountant from various companies. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, YMCA's of the Bay Area provide various community services; Fresh Express Inc. is in the business of packaging salads. There is a posting for an accounting position in real estate; however, the posting does not list the name of the company and indicated that a bookkeeping degree is acceptable with commensurate experience. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Additionally, counsel refers to the *DOT* and contends that it supports his assertions that the degree requirement is common to the industry, as the job offered is for an accountant who performs operational audits, creates tax and investment strategies, and prepares budget, payroll and tax remittances. Counsel states "in fact the *DOT* lists the occupation as professional and kindred." However, the *DOT* 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 for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, counsel's reliance on the *DOT* is insufficient.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. Counsel states that the duties of the proffered position are so specialized and complex that a bachelor's degree is mandatory. Counsel notes that the proffered position's high level of responsibility requires the prospective employee to report to the CEO and CFO of the company. Counsel asserts that the job duties "constitute a Level 2 responsibility, as the position is multi-faceted and requires versatility and prior knowledge." Upon review of the record, the petitioner has not documented the duties of the proffered

position in relation to the nature of its business and the employees currently performing similar duties. 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.