

identifying and decided to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: WAC 03 095 51094 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 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 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 diamond importer and 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 does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of an accountant.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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) the 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) the Form I-290B with 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 is set forth in the Form I-129 petition with supporting documentation and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

40 per cent of the time

- Analyze and compile financial information to prepare entries to accounts, such as general ledger accounts;
- Document business transactions;
- Prepare balance sheets, profit and loss statements and other reports to summarize the current and projected company financial position;
- Consolidate accounting data for preparation of financial statements;
- Complete general ledger postings and assist with monthly closings;
- Prepare monthly financial statements and related reports for management;
- Reconcile balance sheet accounts on a periodic basis;
- Review and analyze profit and loss statements;
- Prepare variance analysis and cash flow analysis;
- Prepare reports required by governmental and regulatory agencies;

- Undertake special projects; and
- Establish, modify, and document implementation of accounting control procedures.

30 per cent of the time

- Analyze operations, costs, revenues, financial commitments and obligations to project revenues and expenses;
- Develop, maintain and analyze budgets and prepare reports;
- Analyze past and present financial operations, trends and costs, estimated and realized revenues to prepare budgets and project future revenues and expenses;
- Interpret budgets to management as well as advising management on matters such as effective use of resources and assumptions underlying budget forecasts; and
- Undertake annual budgeting and forecasting processes.

20 per cent of the time

- Report the company financial condition to management and make recommendations regarding proper utilization of resources, tax strategies and budget;

10 per cent of the time

- Compute tax, ensure proper utilization of resources, tax strategies and budget;
- Audit contracts and prepare audit reports to substantiate transactions prior to settlement;
- Adopt accounting and record keeping functions to current technology of computerized accounting systems; and
- Assist with the preparation of annual audits.

The petitioner requires a bachelor's degree for entry into the offered position. The petitioner does not state that the degree need be in any particular discipline, but deems the beneficiary qualified to perform the duties of the position by virtue of her foreign education which is deemed equivalent to a bachelor of science degree in business administration with a concentration in management from an accredited college or university in the United States.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, as described in the petitioner's business environment, appear to be essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

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. . . .

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 the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

. . . .

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The duties of the proffered position appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: analyze and compile financial information to prepare entries to accounts; document business transactions; prepare balance sheets, profit and loss statements and other financial reports summarizing current and projected financial position; complete general ledger postings and assist with monthly closings; analyze operations, costs, and revenues to project revenues and expenses; prepare budgets; assist in internal auditing procedures; and assist in the preparation of tax returns. On the other hand, and according to the *Handbook*, management accountants record and analyze financial information of the companies for which they work. Their responsibilities include budgeting, performance evaluation, cost and asset management. They are also usually part of executive teams involved in strategic planning or new-product development. The duties of the proffered position are not of the complexity or strategic importance of those described for management accountants. The duties described are routinely performed in the industry by those with less than a baccalaureate level education. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly

important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations and in support of that assertion refers to the *Handbook*. As previously stated, however, the duties of the offered position fall within those noted for bookkeepers, accounting and financial clerks, and are not of the complexity of those normally performed by management accountants. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position and offers no evidence in this regard. The criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) has, accordingly, not been established.

Finally, as previously noted, the duties of the proffered position appear to be routine for bookkeeper, accounting and financial clerks. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described are routinely performed by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The final issue to be determined is whether the beneficiary qualifies to perform the duties of the offered position. It has been determined that the position is not a specialty occupation. Thus, there is no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. It should be noted, however, that the record does not establish that the beneficiary is qualified to perform the duties of an accountant. The *Handbook* notes that most accountant and auditor positions require a bachelor's degree in accounting or a related field. The beneficiary's degree has been determined to be equivalent to a bachelor's degree in business administration with a concentration in management. A review of the beneficiary's transcripts does not indicate that the beneficiary completed sufficient accounting related coursework to qualify to perform the duties of an accountant.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.