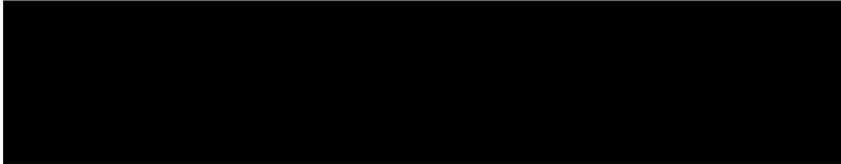


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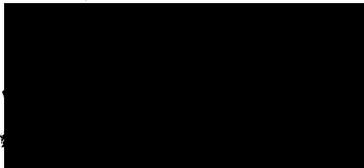
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FILE: WAC 04 026 52248 Office: CALIFORNIA SERVICE CENTER Date: **AUG 10 2005**

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 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 manufacturer and marketer of hair and skin products, with three employees. It seeks to employ the beneficiary as an accountant. The director denied the petition because he determined the proffered position met none 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) the director's request for evidence; (3) the petitioner's response to the director; and (4) Form I-290B, with counsel's brief. 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. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s October 31, 2003 letter of support submitted with the Form I-129; and the petitioner’s January 27, 2004 response to the director’s request for evidence. As identified by the petitioner in its response to the director, the specific duties of the proffered position would require the beneficiary to:

- Compile and analyze information; evaluate and examine entries to accounts, such as general ledger accounts, documenting business transactions. Construct special purpose journals, such as purchases journals, cash receipt journals, cash payment journals and others, and prepare a report. Analyze financial statements;
- Develop, implement, modify and coordinate implementation of sound accounting control procedures;
- Set up a voucher system to give documentary proof and written authorization for business transactions. Establish a petty cash fund and prepare petty cash vouchers for each expenditure. Reimburse the petty cash fund at specific intervals. Track down losses on uncollectible accounts (bad debts) and match them against the company’s profits. Estimate uncollectible accounts expense. Write off uncollectible accounts. Audit contracts, orders and vouchers and prepare reports to substantiate transactions prior to settlement;
- Calculate employee wages and prepare Social Security and other tax reports. Calculate and audit commissions to be paid to marketers;
- Analyze financial information detailing assets, liabilities and capital, and prepare balance sheets, financial statements, profit and loss statements and other reports to summarize the current and projected company financial position using computer software. Prepare on a monthly basis, an income statement, balance sheet and statement of cash flow. Prepare on a semiannual basis, an owner’s equity statement. Prepare on a weekly basis, a cash flow

statement. Prepare bank reconciliations. Identify, compute and record determinable and estimated current liabilities; and

- Analyze operation trends, costs, revenues, financial commitments and obligations incurred to project future revenues and expenses. Develop, maintain and analyze budgets and prepare periodic reports comparing budget costs to actual costs. Identify, compute and record definitely determinable and estimated current liability.

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)).

On appeal, counsel contends that the duties of the proffered position are those of a management accountant as described in the 2003-2004 edition of the DOL *Handbook*. The AAO therefore will first consider the extent to which the discussion of accountant provided by the 2004-2005 edition of the *Handbook* reflects the duties of the proffered position.

The *Handbook*, at pages 68-69, identifies four major fields of accounting: public, management, government and internal. As already noted by counsel, 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.

Based on the above description of the work done by accountants, the AAO does not find the evidence of record to establish that the beneficiary would in fact be working as an accountant, that is, performing duties that require the theoretical and practical application of the highly specialized accounting knowledge that a person attains through a bachelor's degree, or its equivalent, in accounting. While the proffered position clearly requires the beneficiary to have some knowledge of accounting principles, the AAO does not find its

duties to be those of a management accountant. The beneficiary's responsibilities do not reflect the level of authority exercised by accountants, or the complexity of their management and planning roles. Accountants not only record and analyze financial data, they interpret it for the organizations that employ them. Moreover, they have responsibility for cost and asset management within these organizations. The duties of the proffered position, as described by the petitioner, are not on a level with those carried out by management accountants.

Instead, like the director, the AAO has found the duties of the proffered position to be more closely aligned to the responsibilities of "bookkeeping, accounting, and auditing clerks," as described by the *Handbook* at 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.

[A]ccounting clerks have more specialized tasks. Their titles often reflect the type of accounting they do, such as accounts payable clerk or accounts receivable clerk. In addition, their responsibilities vary by level of experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date.

More advanced accounting clerks may total, balance and reconcile billing vouchers; ensure completeness and accuracy of data on accounts

...

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software....

Although the petitioner has characterized its proffered position as that of an accountant, most of the specific duties it has described relate directly to the establishment and maintenance of financial records and are routinely performed by bookkeeping and accounting clerks. The financial analysis and reporting to be performed by the beneficiary is more aligned with the financial statements, reports and summaries prepared by bookkeepers for supervisors and managers than the financial analysis and interpretation performed by accountants. The AAO also notes that the *Handbook's* discussion of the job outlook for bookkeepers states that "full-charge bookkeepers" now perform many of the same duties as accountants.

On appeal, counsel states that the director mischaracterized the nature of the proffered position because he found it unusual for the petitioner, a new business not yet generating income, to require the services of an accountant. The AAO does not agree.

While the director's decision did note that he found it unusual that the petitioner would contemplate the financial burden of hiring an accountant when it had no business transactions for the preceding year, it was not the basis for his denial. Instead, he found the duties of the proffered position, as described by the petitioner, to be closely aligned with the occupation of bookkeeping, accounting and auditing clerks, a conclusion the AAO has also reached.

To determine whether bookkeeping employment may qualify as a specialty occupation, the AAO now turns to the educational requirements for bookkeeping employment. The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping and accounting clerks:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

As entry-level employment as a bookkeeper may generally be obtained on the basis of a high school diploma, the AAO concludes that the proffered position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. A review of the record finds the petitioner has not attempted to establish that its degree requirement for the proffered position is standard among similarly situated businesses or that it routinely requires its employees to hold degrees. Therefore, the AAO will consider only the extent to which the proffered position meets the requirements of the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position. It finds, however, no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by bookkeepers who routinely work in demanding and complex businesses. Further, the employment, 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 bookkeepers. As a result, the AAO concludes that the petitioner has failed to establish its proffered position as a specialty occupation under the final 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.