



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

PUBLIC COPY



Dr

FILE: WAC 04 111 50820 Office: CALIFORNIA SERVICE CENTER Date: DEC 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:
[Redacted]

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

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 corporation engaged in medical services. In order 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 on the basis that the petitioner failed to establish that the proffered position satisfies any of the specialty occupation criteria set forth in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). The crux of the director's decision is, that while the petitioner listed general duties that comport with those indicated by the accountant occupational category as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the evidence of record did not establish that the actual execution of the beneficiary's specific duties would require at least a baccalaureate or the equivalent in accounting or a related specialty.

On appeal, counsel contends that the nature of the proposed duties establish that the petitioner is proffering an accountant position that merits approval as a specialty-occupation position. Counsel asserts, in part, that the director mischaracterized the nature of the position in finding that the duties appear to be those of bookkeeping, accounting, and auditing clerks. In this regard, counsel restates the duties as earlier described in the record, and he notes that the petitioner had divided the worktime requirements of the proffered position as follows:

1. Financial Analysis (55%)
2. Cost Management (15%)
3. Auditing (15%)
4. Budgeting (5%)

As discussed below, the AAO finds that the evidence of record does not establish that the petitioner is proffering a specialty occupation position. Therefore, the appeal will be dismissed, and the petition will be denied. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B with addendum, and counsel's brief.

The director's ultimate conclusion that the evidence does not provide a basis for approving the petition is correct, but the conceptual framework that he applied is flawed in several respects that might lead to an incorrect outcome under circumstances different than those here. The fact that a position involves some non-specialty-occupation duties does not necessarily preclude it from being a specialty occupation position. In circumstances not present here, a position may require a bachelor's degree or its equivalent in accounting even if some of its duties, such as bookkeeping or clerical tasks, do not. The information in the *Handbook* does not suggest or imply that accountant positions are incompatible with any particular business field, or that

a petitioner business must have a certain organizational configuration (such as an accounting department and finance clerks) in order to substantiate the need for an accountant.

Although not a significant factor in the AAO's decision, it is also noted that counsel partly depends upon a regulation that is no longer in effect. Counsel's reliance on 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(4) and (5) as quoted in the record is misplaced. Those provisions, dealing with H-1B status based upon professional standing, and the related section of the Act that they implemented, have been superceded by the specialty occupation provisions reviewed below.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The AAO finds that the petitioner has not established that the proffered position requires the theoretical and practical application of a level of accounting knowledge that is attained by at least a bachelor’s degree, or its equivalent, in accounting or a related specialty. Therefore, the appeal will be dismissed and the petition will be denied.

Counsel’s brief (pages 3, 4) resubmits the following generalized information as “embod[ying] all of the following major areas relating to the practice of professional management accounting”:

FINANCIAL ANALYSIS (55%)

1. Prepare, coordinate, and consolidate financial statements.
2. Prepare monthly analysis and support for Business Operations.
3. Participate in the coordination, review, and analysis of the annual planning process.
4. Utilize financial/qualitative techniques and analyses to support management decision-making.
5. Prepare bank and general ledger reconciliations to analyze [the] company’s financial condition and cash flow.

COST MANAGEMENT (15%)

1. Prepare and maintain cost records and reports for the use in controlling expenditures.
2. Provide management with cost information required to review direct and indirect costs.
3. Gather historical cost data on such activities as equipment depreciation, repairs, operating expenses, etc.
4. Ensure that costs are allocated according to established procedures.

AUDITING (15%)

1. Perform audit tasks to ensure compliance with company policy and regulatory laws by assessing effectiveness of controls, accuracy of financial records, and efficiency of operations as well as ensuring that internal controls are in place.
2. Conduct interviews with staff to ensure recording of transactions and compliance with applicable laws and regulations.
3. Analyze data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, or lack of compliance with laws, government regulations, and management policies or procedures.
4. Prepare acceptable working papers that record and summarize data on the assigned audit task.
5. Assist with various reports for internal and external audits.

BUDGETING (5%)

1. Review, correct and upload annual budget including multi[-]location income statements, balance sheets, cash flow forecasts and branch budgets.
2. Analyze financial and statistical data for use in the development of all components of the annual budget and forecast.
3. Prepare, analyze, and report variance issues and trends to actual expenses as compared to the budget.
4. Ad-hoc budget reporting and modeling throughout the year as assigned or necessary[.]

The only information that the petitioner has provided about its business operations is limited to the Form I-129 entries that the petitioner is in the "Medical Services" business, currently employs eight (8) people, and has a gross annual income of \$700,000. Consequently, the record lacks a factual basis for the AAO to determine the level of accounting knowledge that the execution of the above duties will entail in the particular business context where they will be performed.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. Accordingly, the AAO considered the information on accounting duties as presented in the 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438).

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accounting clerks. These excerpts illustrate the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

(*Handbook*, page 428)

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

(*Handbook*, page 70)

The *Handbook's* subsection "Sources of Additional Information" (page 74) refers the reader to the Internet site for the American Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

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

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The **Accreditation Council for Accountancy and Taxation (ACAT)** is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

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). CIS must determine whether the evidence establishes that performance of the specific duties that comprise 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. What the record reveals about the nature of the specific duties is decisive. A position's title is not persuasive, nor are an employer's hiring standards that exceed the educational level shown to be required by the specific duties.

The evidence of record does not convey any details about the specific matters upon which the beneficiary would work or, consequently, any indication about the level of accounting knowledge required to address those matters. For instance, there is no information about the specific nature of the petitioner's operations, the types and volume of transactions, the nature of the petitioner's financial statements, the spectrum of costs to be managed, the extent of the petitioner's financial dealings, the range of the petitioner's financial records, the specific types of data which the beneficiary would analyze, the size of the petitioner's budget, or the number of the petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. Therefore, there is no factual basis for the AAO to determine the proffered position is one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty.

It is impossible for the AAO to determine where the proffered position fits within the wide spectrum of jobs requiring different levels of accounting knowledge. The evidence of record fails to convey that the beneficiary's specific performance of the record's list of generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor's degree or the equivalent in accounting or any other specific specialty. The petitioner and counsel claim that the proffered position "requires at least a bachelor's degree in accounting or related field of study." (February 14, 2004 letter of support, at page 2). However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already indicated, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any submissions from firms, individuals, or a professional association attesting to recruitment and hiring practices.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. As evident in the discussion regarding the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the record does not relate specific work associated with the generalized duties described by the petitioner, and the record does not contain any documents that exemplify the nature of the proposed accounting work. Consequently, there is no evidence of complexity or uniqueness to satisfy the instant criterion, and the petitioner has not established that the proffered position can only be performed by a person with at least a bachelor's degree in accounting or a related specialty.

As the petitioner has not established a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As indicated in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the record of proceeding lacks evidence of specific duties that would establish such specialization and complexity.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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

[111505/I/AAOMTK01/WAC0411150820.H1B]