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U.S. Citizenship  
and Immigration  
Services

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DJ

FILE: LIN 04 081 50141

Office: NEBRASKA SERVICE CENTER

Date: DEC 13 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 Nebraska 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 an importer and distributor of children's clothing and handicrafts from India, with six employees. It seeks to employ the beneficiary as an accountant 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 he determined the position was not a specialty occupation.

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, with counsel's brief. The AAO reviewed the record in its entirety before issuing 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 (5<sup>th</sup> 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 January 26, 2004 letter of support; and counsel's April 19, 2004 response to the director's request for evidence. As described by the petitioner at the time of filing, the duties of the proffered position would require the beneficiary to:

- Direct and coordinate general accounting for the petitioner and apply principles of accounting to devise and implement a system for general accounting;
- Keep accounts and records; prepare financial reports; and perform other activities including but not limited to maintaining records of assets, liabilities, profits, losses, and tax liabilities;
- Prepare individual, division, or consolidated balance sheets to reflect the petitioner's assets, liabilities, and capital; prepare profit and loss statements for specified accounting periods;
- Audit contracts, orders, and vouchers; and
- Prepare reports to substantiate individual transactions prior to settlement.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO 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 the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 the petitioner has identified its proffered position as that of an accountant, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation. As stated at pages 68-69, job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is that of management accountants, who:

[r]ecord 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 discussion, the AAO does not find the petitioner's general description of the duties of the proffered position to reflect the scope or complexity of the work of accountants. While it agrees that the duties of the proffered position, as described, indicate that the beneficiary would require some knowledge of accounting principles, these duties do not establish the position as that of an accountant. The decisive question is not whether the petitioner's position requires knowledge of accounting principles – which it clearly does – but whether it normally requires the level of accounting knowledge that is acquired by at least a bachelor's degree, or its equivalent, in accounting. In the instant case, the duties of the proffered position – the coordination of general accounting; the keeping of accounts and records; the preparation of financial reports, the maintaining of records of assets, liabilities, profits, losses and tax liabilities; the preparation of balance sheets, and profit and loss statements; the auditing of contracts, orders and vouchers; and the preparation of reports to substantiate transactions prior to settlement – appear to be more closely aligned with the accounting responsibilities performed by bookkeepers and other financial clerks.

The work of bookkeeping, accounting, and auditing clerks is described in the *Handbook* at pages 437-438:

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.

More advanced accounting clerks may total, balance, and reconcile billings vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company

procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

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. They also correct or note errors for accountants or other workers to adjust.

Based on the record before it, the AAO finds the duties of the proffered position, including the reporting responsibilities identified by the petitioner, to fall within the typical employment of a bookkeeper, who in addition to serving as businesses' financial record keepers may also be responsible for the development of financial statements, as well as the preparation of the type of financial reports and summaries described by the petitioner. The AAO notes that on page 438, the *Handbook* states that full-charge bookkeepers are called upon to "do much of the work of accountants." Therefore, the proffered position is determined to be that of a full-charge bookkeeper or, perhaps, intermediate employment between a bookkeeper and accountant, such as a junior accountant.

On appeal, counsel expresses concern that CIS has characterized the petitioner as seeking to employ the beneficiary as a management accountant, when the petitioner has not stated that the beneficiary would be a management accountant. She contends that, in the instant case, CIS has too narrowly defined the proffered position. The AAO does not agree.

The petitioner has indicated that it seeks the beneficiary's services as an in-house accountant to generate and maintain its financial records. It has not established that it would require the beneficiary to perform the type of audits or provide the tax advice usually required of public accountants, nor has it indicated that it would require her to serve as an internal auditor, evaluating its financial and information systems, management procedures and internal controls, and reviewing its operations. Moreover, as the petitioner is a private business, the beneficiary would not perform as a government accountant who guarantees that revenues are received and expenditures made in accordance with law and regulations. Accordingly, the petitioner, although it may not have specifically stated its interest in employing the beneficiary as a management accountant, nevertheless seeks her services in that field of accounting.

On appeal, counsel also contends that the petitioner, although limited in size, nevertheless has the complexity of operations that require the services of an accountant. Counsel's statements will, however, be discounted as the record offers no evidence to support her assertions. Without supporting documentation, the assertions of counsel will not satisfy the petitioner's burden of proof in these proceedings. The 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). The record contains no documentation – e.g., tax returns, business plans, financial statements or audits, etc. – that describes the nature of the petitioner's business operations.

While the size of a petitioner's business is normally not considered in determining its need for a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks

to employ an H-1B worker as an accountant. In cases where a petitioner's business is small, the AAO reviews the record for evidence that its operations are of sufficient complexity to establish that a beneficiary's accounting duties would, nevertheless, require a level of knowledge obtained only through the minimum of a baccalaureate in accounting or its equivalent. In the instant case, the record fails to offer any specific information regarding the petitioner's operations and cannot, therefore, establish them as sufficiently complex to require the beneficiary to hold a degree in accounting.

Having determined the proffered position to be that of a bookkeeper or junior accountant, the AAO turns to the educational requirements for these occupations. The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping 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.

For those seeking employment as junior accountants,<sup>1</sup> the *Handbook*, at page 71, states:

[M]any 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.

As entry-level employment for both bookkeepers and junior accountants may be obtained without a baccalaureate degree or its equivalent, the AAO concludes that the proffered position of bookkeeper does not

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, CA ([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 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 that serve the needs of management and facilitate decision-making.

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.

On appeal, counsel cites two decisions published by the Board of Immigration Appeals (BIA) – *Matter of Arjani*, 12 I&N Dec. 649 (Reg. Comm. 1967) and *Matter of Doultinos*, 12 I&N Dec. 153 (D.D. 1967) – as proof that the occupation of accountant has traditionally been found to be a specialty occupation. However, as previously discussed, the record does not establish the proffered position as that of an accountant. Accordingly, these cases are of little evidentiary value for the purpose of these proceedings.

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, may qualify it under one of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has submitted no evidence to establish the proffered position as a specialty occupation under the first prong of the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations. The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. The AAO finds no evidence in the record that would distinguish the proffered position from similar non-degreed employment. Therefore, the petitioner cannot establish the proffered position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, the record provides no information regarding the petitioner's past employment practices. Therefore, the petitioner cannot establish the proffered position as a specialty occupation on this basis.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the AAO has again reviewed the duties listed by the petitioner. It finds, however, no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by full-charge bookkeepers or junior accountants who routinely work in demanding and complex businesses. Further, the position, 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 a full-charge bookkeeper or junior accountant. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth 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 the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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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.