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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 249 53054 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 nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a hotel ownership and management company. It desires to employ the beneficiary temporarily in the United States as an accountant, at an annual salary of \$35,027, for three years. The director determined that the petitioner did not establish that the proffered position was that of an accountant. The director found that the duties of the position would normally be performed by a bookkeeping or an accounting clerk and that the position did not qualify as a specialty occupation and denied the petition.

On appeal, counsel states that the position is an accountant and is a specialty occupation and that the beneficiary clearly qualifies. Counsel also states that the beneficiary's duties are specialized and complex and the knowledge to perform the duties is associated with a degree.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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) interpret 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-290B and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary's services as an accountant. In determining whether a position qualifies as a "specialty occupation" for purposes of nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

As presented by the petitioner, the beneficiary's specific duties include preparation of financial reports to determine and maintain records of assets, liabilities, profit losses and tax liability; analyze operations of company and prepare report, analyze budgets and prepare budget to actual costs, analyze records of financial transactions to determine accuracy and completeness; preparation of balance sheets, profit and loss statements, amortization and depreciation schedules; present financial reports of the company to management and advise regarding recourse utilization, tax strategies, and budget forecasts; compute taxes owed, ensure compliance with payment of taxes and represent company with tax authorities; development, implementation, modification and documentation of budgeting costs, general property and tax accounting systems and prediction of revenues and expenditures; survey of company operations to ascertain accounting needs, establishment of table of transactions prior to settlement; conduct appraisals, evaluations and inventories of real property and equipment, record description, value, location and other related information; adopts accounting and record keeping functions to current technology of computerized accounting systems.

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).

The AAO turns first 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; 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 Department of Labor's *Occupational Outlook Handbook* (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)).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (Handbook) for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest field to the proffered position is the management accountant. The *Handbook*, 2004-05 edition gives, on pages 68-69, the following information about the nature of the work of a management accountant.

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.

Many of the duties described in the *Handbook* do not 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. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field, which the Department of Labor (DOL) states is required for a management accountant, would not be required for the proffered position.

The Petition for a Nonimmigrant Worker (Form I-129) reflects that the petitioner employs 14 persons. The petitioner indicates, in his letter dated January 12, 2004, that the 14 employees consist of the general manager,

the assistant manager, four (4) front desk clerks, six (6) housekeepers and two (2) weekend breakfast waitresses. Form I-129 also reflects the petitioner's gross annual income as of the petition's filing date as \$3,400,269. However, the record does not contain any evidence, such as income tax returns or payroll records to substantiate this information. 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)).

While the size of the petitioner is generally not a factor in determining whether a position is a specialty occupation, the petitioner's level of income, number of employees, complexity and volume of business transactions have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Absent evidence of these factors, the petitioner has not shown that the proffered duties are so complex and specialized, that the position requires a person with at least a baccalaureate level of education to perform the tasks. The petitioner describes the proposed duties in exclusively general terms and does not demonstrate that the beneficiary would have to apply at least a baccalaureate level of highly specialized accounting knowledge in order to perform these duties. The duties of the proposed position do not rise to the level of those of a management accountant. Many of the beneficiary's duties are performed by bookkeeping, accounting, financial and auditing clerks and these occupations, found on pages 433 and 437 of the *Handbook*, do not require a bachelor's degree in a specific specialty as a minimum entry into the occupation. The *Handbook* also indicates on page 71 that junior accountants are graduates of junior colleges and business and correspondence schools. Accordingly, the petitioner has not established that the proffered position requires at least a baccalaureate degree or higher degree, or its equivalent in a specific field of study for entry into the occupation.

The information in the *Handbook* regarding bookkeeping, accounting, auditing and financial clerks and the beneficiary's proposed duties demonstrate a baccalaureate or higher degree or its equivalent is not required for entry into the position.¹ Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner submits an employment letter from the Days Inn acknowledging the beneficiary's employment as an accountant from June 4, 2001 until January 17, 2003. The letter does not state the duties performed by the beneficiary. Therefore, CIS cannot determine if the beneficiary was performing duties that are usually associated with at least a bachelor's degree level of knowledge in accounting or a related field. Consequently, the letter does not establish that a degree requirement is common to the industry in parallel positions among

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, 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 accounting techniques that serve the needs of management and facilitate decision-making.

similar organizations. Thus, this information does not establish that the position is a specialty occupation under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. The petitioner has limited its information about the position to generalized statements that lack any specific details to distinguish the position as unique from or more complex than a bookkeeper, auditing, financial or accounting clerk, a position for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The petitioner does not assert that it normally requires an individual with a degree in a specific specialty for entry into the proffered position, and offers no evidence concerning the petitioner's past hiring history with regards to this position. Consequently, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the duties of the proffered position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Counsel for the petitioner states that the petitioner is a rapidly growing business and that its business needs have outgrown those that can be provided by an accounting clerk or bookkeeper. Counsel also states that an outside firm performed many of the duties that the beneficiary will perform. Counsel states further that an accountant did the preparation of the petitioner's income tax returns. Counsel concludes by stating that the business has simply grown to the point where the services of an accountant are being brought in-house rather than being outsourced. However, 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). Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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