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U.S. Citizenship
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Services

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FILE: WAC 04 070 52456 Office: CALIFORNIA SERVICE CENTER Date: DEC 21 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:

SELF-REPRESENTED

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 business engaged in the retail and wholesale distribution of fragrances throughout California, with one employee at the time of filing. It seeks to extend its employment of 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). Citizenship and Immigration Services (CIS) has twice previously extended the beneficiary's H-1B status in relation to his employment by the petitioner. The director denied the petition because he determined that the record did not establish the proffered position 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 response to the director's request; (4) the director's denial letter; and (3) Form I-290B, with a letter from the petitioner's counsel. The AAO reviewed the record in its entirety before issuing its decision.

The AAO notes that subsequent to the filing of this appeal, counsel for the petitioner is no longer practicing law. Accordingly, the petitioner will be considered as self-represented in these proceedings.

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.

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 January 5, 2004 letter of support; the beneficiary’s resume submitted at the time of filing; and the list of the beneficiary’s duties provided by the petitioner in its July 20, 2004 response to the director’s request for evidence.

At the time of filing, the petitioner indicated the proffered position would require the beneficiary to:

- Record and analyze the financial information of the company, auditing client’s financial statements and reporting to investors and authorities that the statements have been correctly prepared and reported. Such duties would also include budgeting, performance evaluation, cost and asset management (30 percent of the beneficiary’s time);
- Examine and evaluate the company’s financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate; review company operations and evaluate the efficiency, effectiveness and compliance with corporate policies and procedures, laws and government regulations; summarize transactions in standard formats for financial records and organize data in special formats for financial analysis; analyze financial information in the company’s accounts; and detail company’s assets, liabilities and capital (30 percent of the beneficiary’s time);
- Advise on and recommend tax strategies; advise on the advantages/disadvantages of business decisions or transactions; oversee the preparation of balance sheets, profit and loss statements, necessary checks, payroll, tax remittances and other reports to ensure accuracy; summarize the company’s current and projected financial position; modify and coordinate implementation of the company’s accounting and accounting control procedures; coordinate financial and accounting matters for the company’s branches; and ensure all accounting and financial

reports prepared by the company's branches are accurate and complete (30 percent of the beneficiary's time); and

- Prepare budget and cost benefit ratio analysis and performance reports for company management; deal with clients regarding their accounting transactions; and be in charge of financial reports as specified by the clients (10 percent of the beneficiary's time).

This description of the beneficiary's duties is not, however, fully supported by the beneficiary's resume or the petitioner's description of the proffered position provided in its response to the director's request for evidence. In certain respects, it is also contradicted by the documentation submitted by the petitioner to establish its organizational structure.

The beneficiary's resume lists the duties he has performed as an accountant for the petitioner as follows: reconciliation of client account balances; payroll master in calculating employee wages and preparing checks; maintenance of account ledger for account receivables; preparation of monthly financial reports; maintenance of record for sales slips, payment stubs, receipt, invoices, and financial printouts; and entering financial transactions into the computer.

In its response to the director's request for evidence, the petitioner included a "List of Employees" on which it identified the beneficiary and indicated that he was responsible for:

- Surveying operations to determine accounting needs;
- Analyzing operations, trends, costs, revenues, financial commitments and obligations to project revenues and expenses;
- Analyzing records of financial transactions to determine the accuracy and completeness of entries;
- Establishing a table of accounts and assigning entries to proper accounts;
- Developing, implementing, modifying and documenting the petitioner's budgeting, cost, general, property, and tax accounting systems;
- Predicting revenue and expenditures and submitting reports to management;
- Preparing balance sheets, profit and loss statements, amortization and depreciation schedules, and other financial reports; and
- Adapting account and recordkeeping functions to current technology of computerized accounting systems; and directing activities of workers performing accounting and bookkeeping tasks.

The above description does not include a number of the duties identified by the petitioner at the time of filing, including the auditing of and reporting on client's financial statements; responsibility for cost and asset management, the review of the petitioner's operations to evaluate their efficiency, effectiveness and compliance with policies and procedures, laws and government regulations; and advice on tax strategy and business decisions. The AAO also notes that both descriptions of the beneficiary's duties, indicate he would have oversight duties – coordinating financial and accounting matters for the petitioner's branches and ensuring the accuracy of their financial reports, and directing the activities of workers performing accounting and bookkeeping tasks – when the record does not indicate either that the petitioner's business has branches or that it employs other individuals to perform accounting and bookkeeping tasks. The organizational chart submitted by the petitioner's shows it to have branches and no employees other than the beneficiary and a sales representative.

Accordingly, the record does not provide a consistent picture of the duties of the proffered position. It is incumbent on a petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence that points to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591092 (BIA 1988). Therefore, for the purposes of these proceedings, the AAO will accept as the duties of the proffered position, only those responsibilities that are common to the three job descriptions offered by the record and which, generally, are those outlined on the petitioner's "List of Employees." However, for the reasons previously noted, the AAO will discount the last of the duties listed on this document, which indicates the beneficiary would direct the activities of workers performing accounting and bookkeeping tasks.

To make its determination whether these duties establish the proffered position 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)).

In his denial, the director determined that the record failed to establish that the petitioner engaged in the type of business that typically requires the services of an accountant. However, the discussion of the occupational title of accountants and auditors in the *Handbook* does not support the director's conclusion. It indicates, instead, that accountants perform in a range of business settings, working throughout private industry and government. The fact that the petitioner is a wholesale apparel business does not preclude its potential need for an accountant. Accordingly, the AAO withdraws the director's finding in this regard.

The petitioner has identified its proffered position as that of an accountant. Therefore, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation.

As stated at pages 68-69 of the *Handbook*, 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 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.

The AAO finds the above discussion to be generally reflected in the petitioner's amended description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, the performance of duties requiring accounting knowledge does not establish the proffered position as that of a degreed accountant. The question is not whether the petitioner's position requires knowledge of accounting principles but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.¹ To make this determination, the AAO must consider the petitioner's business operations.

While the size of a petitioner's business operations is normally not a factor in determining the nature of 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 relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to establish that the proffered position's accounting duties would require a level of knowledge obtained only through a baccalaureate degree in accounting or its equivalent.

In the instant case, the record establishes the petitioner as a small business grossing less than \$500,000 annually.² Accordingly, the AAO has reviewed the record for evidence of the petitioner's business operations, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose a degree requirement on the beneficiary.

At the time of filing, the petitioner indicated that it required the services of an accountant because it was experiencing rapid business growth and was in the process of developing expansion programs. On appeal, the petitioner again states that it requires the services of an accountant because of significant increases in its business dealings and transactions, and its expansion plans.

While the AAO acknowledges that business growth and expanding operations may establish a potentially complex financial environment, the record does not support the petitioner's assertions in this regard. Although, on appeal, the petitioner submits a significant number of 2003 sales invoices and purchase orders, and cancelled business checks from 2002-2003, this documentation is not evidence of the growth of the

¹ The website of the American Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants, indicates that a degree in accounting or a related specialty is not required for accreditation as an Accredited Business Accountant® /Accredited Business Advisors® (ABA). Eligibility for the eight-hour comprehensive examination of 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." Up to two of the required years of work experience may be satisfied through college credit. (<http://www.nsacct.org/acat.asp>).

² Although the Form I-129 indicates the petitioner's gross annual income is \$300,000, the 2002 and 2003 federal tax returns submitted in response to the director's request for evidence report the petitioner grossed a total of \$400,567 in 2002 from two separate business locations and \$203,576 in 2003 from a single location. Although, these returns are unsigned, the AAO will, nevertheless, consider the income they report for the purposes of these proceedings.

petitioner's business or the expansion of its operations. Further, the tax records submitted by the petitioner in response to the director's request for evidence indicate the opposite may be true. Based on the information provided by these records, the petitioner's gross income fell, rather than increased, from 2002 to 2003.³ Therefore, the record does not establish the growth of the petitioner's business or the expansion of its operations. Going on record without supporting documentation is not sufficient to meet 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)).

The record also fails to establish that the petitioner has the type of financial obligations – lines of credit, complex depreciation schedules for newly acquired infrastructure or equipment, or loan agreements – that might complicate its financial situation and require the services of a degreed accountant. The petitioner's tax returns for 2002 and 2003 do not indicate that the petitioner has any such financial obligations.

Accordingly, the petitioner has failed to demonstrate that its business or financial operations are of sufficient complexity to require the level of accounting knowledge that may only be obtained through a baccalaureate degree in accountancy. Therefore, the duties of the proffered position are not established as those of a degreed accountant. Instead, they appear more closely aligned to the accounting responsibilities of bookkeepers or junior accountants, employment that does not impose a degree requirement on those seeking entry-level employment.

Educational requirements for financial clerks, including bookkeepers, are discussed at page 434 of the *Handbook*:

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.

With regard to junior accountants,⁴ the *Handbook*, at page 71, states:

³ Ibid.

⁴ According to the website for Skyline College, a community college located in San Mateo, CA (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. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

[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/junior accountant 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.

To establish the proffered employment as specialty occupation under the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or 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 petitioner has submitted letters from two California businesses. This documentation does not, however, satisfy the requirements of the criterion's first prong.

Only one of the letters comes from a company that appears to be in the same type of business as the petitioner, a organization engaged in the wholesale and retail distribution of fragrances. However, the letter describes a business with import/export operations that appears to have a considerably more complex structure than does the petitioner. Further, it provides no discussion of the duties of the finance/accounting position for which the company requires a degree and, therefore, does not establish that this position is parallel to the proffered position. Neither is the letter accompanied by the documentation necessary to establish the firm's employment of a degreed finance/accounting officer, e.g., quarterly wage reports for the individual and his or her diploma. The AAO also notes that a single letter is insufficient proof of an industry norm. Therefore, the record does not establish that the petitioner's degree requirement is the norm within its industry.

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)(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. It contains no evidence that would distinguish the proffered position, based on its unique nature or complexity, from similar non-degreed employment. Accordingly, the petitioner has not established the proffered position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally 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. In the instant case, the petitioner has previously employed the beneficiary in the proffered position and, therefore, asserts that it has established that its normal practice is to require a degree for the proffered position. However, while the

AAO acknowledges the petitioner's previous H-1B employment of the beneficiary, it does not find that employment to satisfy the third criterion.

To meet the criterion's requirements, a petitioner must not only establish that it normally imposes a degree requirement for a proffered position, but also that the position's duties require a degree (or its equivalent). Were CIS limited solely to reviewing a petitioner's self-imposed degree requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. In the instant case, the AAO has found the proffered position to be that of a bookkeeper or junior accountant, employment that does not require the beneficiary to hold the minimum of a baccalaureate degree. Accordingly, the petitioner's previous employment of the beneficiary in this position does not establish it as a specialty occupation.

To qualify a proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must establish that the nature of the position's 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. As the employment of bookkeepers or junior accountants does not normally impose a degree requirement on those seeking such employment, the petitioner must, therefore, distinguish the duties of the proffered position from those generally performed by bookkeepers or junior accountants.

However, the petitioner's discussion of the proffered position's responsibilities, as amended by the AAO, does not indicate that the duties to be performed by the beneficiary would require a greater level of knowledge or skill than that normally possessed by bookkeepers or junior accountants. Neither does the petitioner describe duties that represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications other than those of a bookkeeper or junior accountant. Therefore, the record does not establish the proffered position as a specialty occupation under the fourth criterion.

As already indicated, the beneficiary in the instant case was twice previously approved for H-1B employment with the petitioner. However, CIS approval of prior H-1B petitions benefiting the beneficiary does not, however, provide a basis for approving the instant petition. CIS is not bound to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Further, each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Moreover, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a nonimmigrant petition on behalf of a previous beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For the reasons previously discussed, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the petitioner's appeal is dismissed.

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 met that burden.

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