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U.S. Citizenship
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02

FILE: WAC 03 033 51688 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner operates three residential care homes for the elderly. It seeks to employ the beneficiary as a management accountant and to classify her 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 ground that the proffered position is not a specialty occupation. In the director's view, the duties of the position are not those of an accountant, but rather of a bookkeeper or accounting clerk, which does not qualify as a specialty occupation. On appeal counsel argues that the duties of the position are those of a management accountant, and the position meets three different criteria of a specialty occupation under the applicable regulations.

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.

As provided in 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 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-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of decision; and (5) Form I-290B, the appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. As explained in a letter accompanying its H-1B petition, the petitioner operates three assisted-living residential homes for the elderly, each with a capacity of six persons. For several years the petitioner has used an outside accountant (a letter from that individual is in the record), but wants to hire a full-time, in-house accountant to better manage the business. As listed by the petitioner, the duties of the position include the following:

1. Analyze operations, trends, costs, revenues, financial commitments, and obligations incurred to project future revenues and expenses, using computer.
2. Develop, maintain, analyze budgets, and prepare periodic reports comparing budgeted costs to actual costs; develop and maintain reporting and internal control procedure in procurement and asset management; predict revenues and expenditures and submit reports to management.
3. Analyze records of financial transactions to determine accuracy and completeness of entries, using computer; establish chart of accounts, and assign entries to proper accounts; examine and analyze monthly bank statement/reconciliation of the company.
4. Prepare financial reports and financial analysis; monthly income statement; comparative statement of income and expenses; monthly balance sheet with bank reconciliation statement; schedule of aging of receivables; schedule of payables to suppliers; amortization and depreciation schedules.
5. Report finances of the company to management, and advise management about resource utilization, tax strategies, and assumptions underlying budget forecasts.
6. Develop, implement, modify and document budgeting, cost, general property and tax accounting system according to current technology of computerized accounting systems.
7. Compute taxes owed, ensure compliance with tax payment, reporting, and other tax requirements, and represent the clinic before taxing authority.

The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree. The beneficiary earned a Bachelor of Science in Commerce with a Major in Management at Harvardian Colleges in the Philippines in 1995, after which she worked as an accountant at Magbiray Press, Inc. in Manila from November 1995 until 2002.

The director found that the position offered to the beneficiary more closely resembled that of a bookkeeping or accounting clerk, than that of an accountant. He based this finding on a comparison of the listed duties of the subject position with the descriptions of bookkeeping/accounting clerks and

management accountants in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. In the director's view, "not all of the duties of the proffered position are at the level of an accountant. Instead, a significant amount of the beneficiary's time will be spent performing many of the duties of a bookkeeper," including such activities as "monthly balance sheet with bank reconciliation statement, schedule of aging of receivable[s], schedule of payables to suppliers, etc." The *Handbook* indicates that a baccalaureate degree is not required for entry into the occupation of bookkeeping or accounting clerk in the United States, which is one criterion for qualification as a specialty occupation. Nor was there evidence that the proffered position met any other criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director concluded that the proffered position did not qualify as a specialty occupation under the Act.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS are whether the *Handbook* indicates a degree is required by the industry; 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

In his appeal brief counsel argues that the job duties of the beneficiary are more similar to the *Handbook's* description of a "management accountant." As described at pages 68-69 of the *Handbook*, 2004-05 edition:

Management 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.

The *Handbook* goes on to state that most accountant positions require at least a bachelor's degree in accounting or a related field. See *id.* at 70. Counsel asserts that, like management accountants, the duties of the proffered position include "recording and analyzing financial information" (duties 1 – 4), "budgeting, performance evaluation and asset management" (duties 2, 4, and 5), and "preparing financial reports for non-management groups, like tax authorities" (duty 7). Counsel describes these duties further in his brief. He also supplements the brief with a new job description from the petitioner which provides a more detailed description of the seven listed duties and apportions the percentage of time (ranging from 10% to 20%) the beneficiary will spend on each.

Counsel asserts on appeal that the proffered position meets the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) because, as the *Handbook* indicates, a bachelor's degree in accounting or a related field is the minimum requirement for most accountant positions. The AAO is not persuaded, however, that the proffered position is actually at the level of a management accountant. There is no indication in the job duties that the subject position is part of any executive teams involved in strategic planning or new-product development, as the *Handbook* states is usually the case for management accountants. The petitioner has not established that it has the need of, much less the personnel for, such teams. In addition, the proffered position is a solitary position in the petitioner's business, not a position "within [an] accounting department" as the *Handbook* envisions. The AAO agrees with the director that the proffered position, viewed in the context of the petitioner's business, is closer to that of a bookkeeping or accounting clerk. As described in the *Handbook*, 2004-05 edition, 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. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable 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; and code documents, according to company procedures.

According to the *Handbook*, at page 434, an associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position. The proffered position, therefore, does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel asserts that the proffered position qualifies as a specialty occupation under the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because a degree requirement is common to the industry in parallel positions among similar organizations. In support thereof counsel submitted photocopied letters from two companies in Torrance, California – Tiarachrista, Inc. and Virsar, Inc. – each of which states in identical language that it is

engaged in the similar business with similar annual income, organization and number of employees as [the petitioner] . . . currently employs an accountant and our normal requirement for this position is a BS degree in accounting or related field.

The AAO notes that neither company provides any details about the accountant positions, such as whether they are full-time in-house positions or outside part-time consultants, and what range of services they perform. Though Virsar’s letterhead does identify its business as “residential care facilities for the elderly,” the nature of Tiarachrista’s business is not identified in its letter. Moreover, neither company reveals how many employees it has, its annual income, or any other indicia of its size and scale of operations. The AAO determines that the letters fail to establish that the accountants at Virsar and Tiarachrista are parallel positions to the proffered position in this case, or that those two companies are similar organizations to the petitioner. Accordingly, the record does not establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Lastly, counsel asserts that the proffered position qualifies as a specialty occupation under the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the duties are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The AAO is not convinced. For the reasons previously discussed, the AAO agrees with the director that the duties of the proffered position include many routine bookkeeping tasks. Nor has the petitioner demonstrated that it needs the specialized services of a full-time in-house accountant. Accordingly, the record does not establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Thus, the proffered position does not meet any of the three qualifying criteria of a specialty occupation that counsel claims under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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