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U.S. Citizenship
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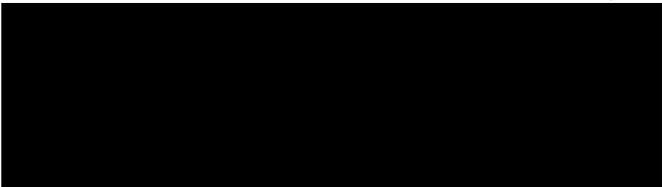


FILE: WAC 03 023 54956 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2005

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:



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 pest control business, specializing in termite inspections and eradications. It also offers annual maintenance services and the repair of structural damage created by termites. It seeks to employ the beneficiary as an accountant. The director denied the petition because the position was determined not to meet the criteria required for classification 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 petitioner's response to the director; and (4) Form I-290B, with a brief submitted by counsel. The AAO reviewed the record in its entirety before reaching 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 (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 October 18, 2002 letter of support accompanying the Form I-129; and the petitioner's August 15, 2003 response to the director's request for evidence.

In its response to the director's request for evidence, the petitioner divided the beneficiary's responsibilities into two categories: financial management, and audit and control. It described the beneficiary's duties within those categories as follows:

Financial management (70 percent of the beneficiary's time)

- Financial management -- Development of management accounting, and implementation and maintenance of effective planning and reporting systems, including the analysis of financial reports of assets, liabilities, capital, profit and loss and other financial activities of the company to determine or maintain records of the same;
- Financial planning -- Management of all regional accounting and finance functions, including maintaining the accuracy of all ledger accounts and financial statements, verifying the accuracy and completeness of budgetary accounting records, analyzing budget documents, bank and payroll reconciliations, cost reporting and balance sheets; and managing complex accounting projects, including providing findings and recommendations to management; and analyzing assets, liabilities, and capital, and maintaining balance sheet, profit and loss statements, and other reports to summarize current and projected financial positions;
- Receivables management -- Determine, create and process any necessary adjustments identified in the reconciliation process; monitor the analysis of bad debt allowances; research proper application of unapplied cash and apply as appropriate; review, research, and enter credit memos, debt memos, and transfers; provide expertise on the treatment of accounting transactions and related financial reporting, and provide analysis on financial results; review and reconcile monthly accounts receivable aging reports; identify trends/variances and analyze general ledger accounts and review journal entries; and participate in the

development, implementation and evaluation of operational activities of the petitioner and its clients; and

- Cost management – Use knowledge in cost management concepts or tools for operational improvements or strategic decisions, life-cycle cost management, cost of quality, operational and capital budgeting; manage the petitioner’s fiscal and administrative systems, including the operation and maintenance of all computerized and manual accounting records, budget development and reporting; forecast monthly and annual revenue and expense budgets for all operations; analyze monthly expenditure and revenue reports and make recommendations to ensure compliance with budget projections; analyze preliminary operating reports and trial balance during month’s end closings; and evaluate various statistical and financial data for cost reports.

Audit and Control (30 percent of the beneficiary’s time)

- Maintain cash forecast, evaluating the accounting books of the petitioner’s business and its clients to assure accurate account balances;
- Participate in company’s decision-making process related to accounting issues and procedures;
- Install, modify, document and coordinate accounting systems, generally accepted accounting standards and control procedures; make recommendations regarding the accounting of reserves, assets, and expenditures; and analyze invoices, purchase orders and delivery receipts to ensure accuracy of vendor payments;
- Provide support to the monthly reporting of external or centralized internal collections, billing and billing inquiry, purchase order and accounts payable functions;
- Maintain local expense budget and efficient use of working capital, safeguarding assets by enforcing proper local control environment;
- Focus on the collection, organization, and analysis of financial and accounting information; perform feasibility studies and substantiate funds availability; verify charges are made to appropriate program accounts; independently identify discrepancies, research questions and issues; and ensure encumbrances and payments are correct and in compliance with fiscal and program contract requirements; and
- Study and design operations to ensure internal control and verifiable audit trails; develop and implement a computerized accounting and inventory management system; and conduct studies and recommend ways to improve internal control procedures.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first 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 CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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.Min.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 duties of the proffered position resembled those of bookkeeping, accounting and auditing clerks, as described in the 2002-2003 edition of the DOL *Handbook*. He, therefore, found that a baccalaureate or higher degree, or its equivalent, was not required to perform them.

In reaching its own conclusions regarding the degree requirements of the proffered position, the AAO has relied upon the 2004-2005 edition of the *Handbook*. As stated in the *Handbook*, specific 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 or private accountants who

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 AAO finds that the above description of the occupation of management accountant does not parallel that of the proffered position. The stated duties and responsibilities of the petitioner's position do not meet the complexity or scope of responsibility normally required of a management accountant. While management accountants are certainly required to record and analyze the financial information of the companies for which they work, their responsibilities extend beyond these requirements, being much broader and more complex than those outlined in the petitioner's job description.

Instead, it would appear that the proffered position's duties are, as already noted by the director, more aligned with the duties performed by bookkeeping, accounting, and auditing clerks. The record shows that the beneficiary would largely be responsible for the petitioner's financial recordkeeping, maintaining the accuracy of its accounts and financial statements, and managing the operation of its accounting systems. These are duties that closely resemble those of bookkeepers, accounting and auditing clerks as described in the *Handbook*:

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....

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software....

On appeal, counsel states that CIS' determination that the petitioner's position is that of a bookkeeping, accounting or auditing clerk ignores the fact that the duties of the proffered position go beyond the "record-keeping aspect of accounting." He contends that in reaching his decision, the director did not consider the petitioner's detailed description of its proffered position provided in response to his request for evidence. Further, counsel asserts that the beneficiary will not serve as the petitioner's bookkeeper as those duties are the responsibility of the individual managing the petitioner's business. The AAO, however, does not find counsel's statements to be supported by the record before it.

In describing the duties of its proffered position in its response to the director's request for evidence, the petitioner repeatedly emphasized the beneficiary's duties with regard to its financial records and systems, describing the individual as responsible for the accuracy of all ledger accounts and financial statements; the accuracy and completeness of budgeting accounting records; the maintenance of balance sheets, profit and loss statements and other reports; the entering of credit and debt memos and transfers; the review and reconciliation of monthly accounts receivable aging reports; the oversight of the petitioner's fiscal and administrative systems, including the operation and maintenance of all computerized and manual accounting records; the accuracy of all account balances; and the installation and coordination of accounting systems. The petitioner's references to the beneficiary's responsibilities for financial analysis generally indicate that such analysis is to be performed in support of the beneficiary's primary responsibility for the development and maintenance of its financial records and systems, e.g., the beneficiary "will analyze financial reports of assets, liabilities, profit and loss and other financial activities of the company to determine or maintain record of assets, liabilities, profit and loss, tax liability, or other financial activities within our organization." As such, the analytical work to be done by the beneficiary appears similar to that performed by bookkeepers in preparing the financial statements, reports and summaries that are included among their duties. As a result, the petitioner's description of its proffered position in its response to the director does not appear to support a finding that the proffered position is other than that of a full-charge bookkeeper who, in a small establishment, may be responsible for all the financial transactions and recordkeeping of that business.

Further, counsel's statements that the beneficiary will not perform the duties of a bookkeeping or accounting clerk appear to be contradicted by the petitioner's own description of an accountant's role within its organization. This description, submitted with the petitioner's organizational chart in response to the director's request for evidence, stated the responsibilities of its accountant as follows:

Prepares financial statements (balance sheet, income statement and profit and loss statement) and variance analysis, prepares cash flow and budgetary projections, monthly remittance at time of payroll tax to EDD and IRS, prepares payroll for employees/officers, prepares checks for all creditors and receipts payments for customers.

The duties highlighted by the petitioner in this description clearly parallel those of bookkeeping and accounting clerks and serve as further evidence that the petitioner's proffered position is primarily that of a bookkeeper, rather than an accountant.

Having determined the proffered position to be that of a bookkeeper, the AAO turns again to the *Handbook* to identify whether the occupation requires individuals seeking employment to have the minimum of a baccalaureate or higher degree, or its equivalent. The *Handbook* states the following with regard to the educational requirements for financial clerks, among which it includes bookkeepers:

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,...an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts....

The AAO notes that the petitioner, in its August 15, 2003 response to the director's request for evidence, submitted documentation of the degree requirement for accountants from the Spring 1999 *Occupational Outlook Quarterly* and the *California Occupational Guide*, having already provided materials from the 2002-2003 DOL *Handbook* at the time of filing. However, as the proffered position has been determined to be that of a bookkeeper, the evidence of a degree requirement for the occupation of accountant is not relevant to the AAO's analysis as to whether the petitioner's position imposes a degree requirement.

Accordingly, as the *Handbook* clearly states that the occupation of bookkeeping, accounting and auditing clerks does not require those seeking employment to have a baccalaureate or higher degree, or its equivalent, the AAO concludes that the proffered position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish eligibility under the second criterion – that a specific degree requirement is common to the industry in parallel positions among similar organizations or that 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, in its response to the director's request for evidence, submitted eight Internet job postings for accountant positions, a letter from another California-based pest control business stating its practices when hiring accounting personnel, and the resume of a management financial analyst employed by a third pest control business. However, none of these documents establish the proffered position as a specialty occupation.

The Internet announcements submitted by the petitioner advertise accountant positions and, therefore, are not probative in establishing the proffered position of bookkeeper as a specialty occupation under the second

criterion. Further, these job advertisements do not appear to reflect the degree requirements of organizations similar to that of the petitioner, as stipulated at 8 C.F. R. § 214.2(h)(4)(iii)(A)(2).

The letter submitted by the petitioner from Termicon Exterminators also fails to establish that the petitioner's degree requirement is an industry norm. Despite the petitioner's assertions in its response to the director's request for evidence, the letter does not state that Termicon requires job applicants to have bachelor's degrees, only that it prefers to hire such individuals. Further, it does not expressly state that Termicon employs accountants, only persons in the field of accounting. Finally, the letter does not provide the information necessary to determine whether the company has a position that is parallel to the petitioner's, nor does it indicate whether individuals working with the company's accounts have degrees directly related to accounting.

The AAO also finds the resume and degree certificate of the management financial analyst submitted by the petitioner to be unpersuasive in establishing its proffered position's degree requirement as common to its industry. First, the resume does not respond to the second criterion's stipulation that a petitioner establish a degree requirement in positions parallel to its own. While the individual's employment is with a pest control firm, the duties of that employment – the analysis of financial information to support company investment decisions – are not parallel to those assigned to its proffered position by the petitioner.

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; 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.

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 employment 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 submitted no evidence to establish that its normal hiring practice is to impose a degree requirement on individuals seeking employment for its position. As a result, the AAO finds the petitioner has not established that its proffered position qualifies as a specialty occupation based on its normal hiring practices.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a full-charge bookkeeper or represent an amalgam of jobs that require different skills and qualifications. Further, the AAO has taken into account counsel's statements on appeal concerning the complexity of the position's duties.

On appeal, counsel states that the beneficiary will have responsibility for duties that are not performed by bookkeepers and accounting clerks, including the analysis of financial information, the projection of the petitioner's financial position, the performance of value chain and cost driven analysis, and the study of the

petitioner's liquidity, profitability and long-term solvency. However, the AAO's reading of the petitioner's description of the beneficiary's duties does not reach this conclusion. Instead, as previously discussed, it finds the analytical duties assigned to the proffered position to largely support the beneficiary's primary responsibilities for creating and maintaining the petitioner's financial records and accounting systems. As such, they appear commensurate with the work that must be done by bookkeepers to prepare the financial statements, reports and summaries that, as described by the *Handbook*, are routinely required by managers. Further, counsel's statement that the duties of bookkeepers are strictly limited to record keeping fails to appreciate the wide-ranging financial duties currently performed by full-charge bookkeepers. As noted in the *Handbook's* discussion of the job outlook for bookkeepers, full-charge bookkeepers now perform many of the same duties as accountants.

Having considered the duties of the proffered position, as well as counsel's statements regarding these duties, the AAO finds no evidence in the record to show that the responsibilities of the proffered position require greater knowledge or skill than that normally needed by bookkeepers who routinely work in demanding and complex business situations. Further, the proffered 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. 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 that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.