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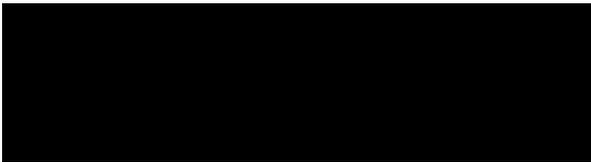
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U.S. Citizenship
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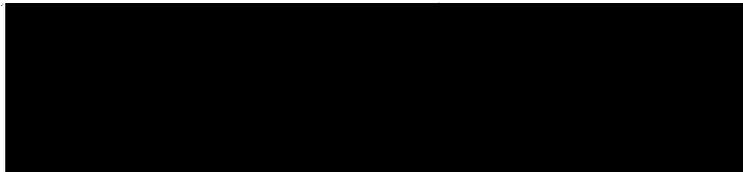


FILE: WAC 03 030 51352 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2005

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 residential health care facility, operating at two locations, with a capacity to care for 12 patients. It seeks to employ the beneficiary as a staff 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) counsel's response to the director; and (4) Form I-290B, with a statement 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 10, 2002 letter of support submitted with the Form I-129; and counsel's response to the director's request for evidence. Stating in its letter of support that the proffered position included aspects of institutional managerial accounting, as well as major systems accounting duties, the petitioner described the specific duties to be performed by the beneficiary as follows:

- Devise and implement a manual and computerized system for entry and reporting of routine financial data;
- Provide staff training in use of system;
- Administer the system after implementation;
- Assemble and report financial data on periodic and special bases, including A/R, A/P, Reconciliations, etc;
- Analyze costs with a view toward reducing costs and improving services in the areas of food service, other resident services, supplies and equipment, and consult with management on findings and recommendations;
- Assume responsibility for annual budgeting by component and specific budgeting for expansion projects;
- Assume responsibility for tracking of insurance payments and for all dealings with insurance carriers; and
- Assume general responsibility to implement systems for greater control and accountability.

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 found the duties of the proffered position to more closely resemble those of bookkeeping, accounting and auditing clerks, as described in the 2002-2003 edition of the DOL *Handbook*. and concluded that a baccalaureate or higher degree, or its equivalent, was not required to perform those duties. In its own review of the duties 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 category closest 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.

Few of the management accountant duties described in the *Handbook* apply to the petitioner's position as it has been described in the evidence offered by the petitioner. 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. The duties of the proffered position are not on a level with those carried out by management accountants.

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 who require only a high school diploma to seek employment in entry level positions. The record shows that the beneficiary would largely be

responsible for the petitioner's financial recordkeeping -- developing and managing a financial accounting system, and tracking costs and income, as well as insurance company payments -- 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, as described by the *Handbook*, ignores the fact that the duties of the proffered position involve substantial systems accounting, cost analysis, budgeting, and training responsibilities which have no relation to the duties of a bookkeeper. The AAO does not agree with counsel's analysis.

Counsel's assertions that the proffered position is that of an accountant appear to rely, in part, on the occupational descriptions of accountant, systems accountant and cost accountant found in the *Dictionary of Occupational Titles (DOT)*, which were discussed in counsel's response to the director's request for evidence. However, the AAO does not find the *DOT* to be a persuasive source of information regarding the classification of occupations, including whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the level of education, training, and experience required to perform the duties of that occupation. While the AAO is aware that the *DOT* accords these positions an SVP rating of 8, this rating indicates only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. As a result, an SVP rating cannot satisfy CIS requirements that the degree discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A) be in a specific specialty that is directly related to the proffered position.

Counsel also finds the complexity of the proffered position's duties, as analyzed in his response to the director's request for evidence, to distinguish it from that of a bookkeeping and accounting clerk. In his response to the director, he emphasized that the beneficiary would have responsibility for the installation and administration of a manual and computerized financial reporting system, cost analysis activities requiring the use of accounting and analysis software to generate reports for the petitioner, and the collection and analysis of specific cost and income data to formulate budget projections, citing these as typical accountant duties.

However, the *Handbook* clearly indicates that the maintenance of accounting systems is a standard responsibility of bookkeepers, as is the preparation of financial reports and summaries for supervisors and managers, and that increasingly bookkeeping, accounting and auditing clerks rely on specialized accounting software to do their work. Further, the AAO notes the *Handbook's* discussion of the job outlook for bookkeepers in which it states that "full-charge bookkeepers" now perform many of the same duties as accountants. It concludes, therefore, that the duties of the proffered position, including those specifically discussed by counsel in his response to the director, are those of a full-charge bookkeeper. As 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 finds that the proffered position does not qualify as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish 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 – counsel, in his response to the director's request for evidence, referenced the degree requirement noted by the *Handbook* for the occupation of accountant. However, as the AAO has determined that the proffered position is that of a full-charge bookkeeper rather than an accountant, the *Handbook's* discussion of the degree requirement for the occupation of accountant is not relevant to this proceeding. Absent other evidence to establish that the petitioner's degree requirement for its position is a norm within its industry, the AAO finds that the petitioner has failed to satisfy the requirements 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; 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. The petitioner's October 10, 2002 letter of support states the sole minimum requirement for its position is a bachelor's degree in business administration, with specialization in accounting. However, after reviewing the record before it, the AAO finds no evidence to support this statement, nor any to establish that the petitioner's standard practice is to impose a degree requirement on individuals seeking employment for its position. As a result, the AAO finds the petitioner cannot establish 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, as expanded upon by counsel in his response to the director's request for evidence, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a full-charge bookkeeper or, perhaps, represent an amalgam of jobs that require different skills and qualifications. Further, the AAO has taken into

account counsel's statements concerning the complexity imposed on the proffered position by the nature of the petitioner's business, specifically that offered in response to the director's request for evidence:

Unlike a small store or shop employing 3 persons, this is a complex enterprise despite its size. Because the complete care of infirm human beings under state license is involved, there is inherent complexity in the financial aspect of the business. First, budgets must be prescribed and adhered to which will both guarantee proper shelter, nutrition, recreation, and health maintenance services to the residents; and preserve the profitability of the business. Second, a system must be maintained for charging and tracking government and private insurance billing and payment for these services. Third, unlike a small store or shop, a business such as this must file mandatory reports and maintain records for government review as part of the requirements to maintain licensure. All of these aspects of complexity are reflected in the present job description.

Having considered the duties of the proffered position, as well as the effect of the petitioner's business on those 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 businesses. Further, the job, 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.