

Unauthorized disclosure or
prevention of such disclosure
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529

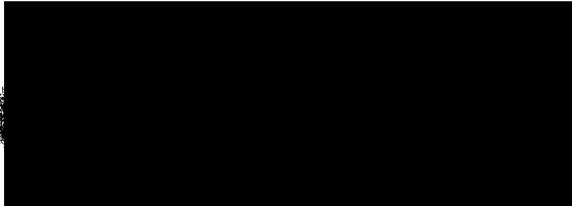


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

DA

FEB 08 2005



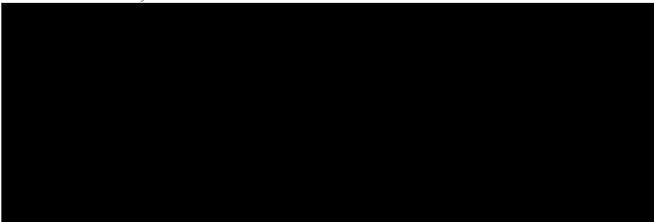
FILE: WAC 02 289 52259 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 realty company that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 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; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail setting up a computerized accounting system that will retain information to be used to prepare quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements; directing the implementation of a general accounting system to track accounts and records of disbursements, expenses, tax payments, and general ledgers; preparing balance sheets reflecting assets, liabilities, and capital; performing audits and preparing reports; inspecting the accounting system to determine its efficiency and protective value; preparing reports of findings and recommendations for management; and providing tax planning advice. Counsel submitted a December 3, 2002 letter elaborating on the duties of the proposed position. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in accounting or a related field.

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that a petitioner must have a reasonable and credible offer of employment that is consistent with its needs. The director found that the petitioner did not submit documentary evidence to show that similar businesses require the services of persons in parallel positions or that the petitioner has unique and specific needs for an accountant.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that the services of an accountant are needed because the petitioner's business involves multiple accounts, agents, broker fees, mortgage rates, and varying property types. Counsel states that the petitioner previously used the services of an accountant. Referring to the court's decision in *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989), counsel states that the court held that the size of a petitioner's operation bears no rational relationship to the need for a professional; counsel further states that the type of industry is also not relevant. According to counsel, a petitioner's size is relevant to determine whether a full-time employee is required; counsel states that the beneficiary will be employed part-time. The submitted job postings, counsel states, demonstrate the petitioner's need to hire a candidate with a bachelor's degree or its equivalent in accounting. Counsel claims that the beneficiary's duties resemble those of an accountant in any company; that a large company such as General Electric and the petitioner, a real estate agency with two employees, use the same accounting techniques and require the same knowledge; and that because the principles of accounting are universal, accounting duties are universal.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular

position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO notes that counsel's December 3, 2002 letter included duties that were not described in the petitioner's September 25, 2002 letter. For example, counsel stated that the beneficiary will "monitor the company's budgeting, performance evaluation, cost and assets management." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the job duties described by counsel that differ from those narrated by the petitioner do not carry evidentiary value.

Counsel states that the beneficiary's duties are performed by an accountant. The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* discloses that the duties of the proffered position do not rise to the level of those performed by an accountant. The *Handbook* reveals that 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 the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in budgeting, performance evaluation, and cost and asset management. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level

of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position.

The *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The petitioner stated that the beneficiary will prepare quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements; direct the implementation of a general accounting system to track accounts and records of disbursements, expenses, tax payments, and general ledgers; prepare balance sheets reflecting assets, liabilities, and capital; and perform audits and prepare reports. These duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports, verify records of transactions, produce financial statements, prepare reports and summaries for supervisors and managers, and handle payroll. The *Handbook* briefly notes the growing use of financial software to enter and manipulate data.

The *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. Thus, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, accountant.

The second criterion requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. For various reasons, the submitted job postings are not persuasive in establishing the second criterion degree at 8 C.F.R. § 214.2(h)(4). Harbor Properties, Inc. differs in scope from the petitioner, a small realty company, because it develops and manages residential, office, and retail spaces. Paymentech, a processor of bankcard transactions; Korman Communities, a provider of apartment houses and corporate suites; Russell Reid Waste Hauling and Disposal; and Bernie & Phyl's Furniture differ from the petitioner. The AAO cannot determine whether the company, Down to Earth, is similar to the petitioner. No duties are mentioned in the postings for the inventory accountant and the junior accountant in Atlanta; thus, the AAO cannot determine whether the positions are similar to the proffered position. For the stated reasons, the petitioner cannot establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Counsel's reference to *Young China Daily* is not persuasive in the context of the second criterion at 8 C.F.R. § 214.2(h)(4) inasmuch as the regulation requires that a petitioner establish that a specific degree requirement is common to the industry in *parallel* positions among *similar* organizations.

The evidentiary record does not establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, the *Handbook* reveals that the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties 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. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. No evidence in the record shows that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, 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.