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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 01 2005

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 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 is a communications company. It seeks to employ the beneficiary as an 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 record did not establish that the proffered position qualifies as a specialty occupation.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a communications company providing specialized internet protocol data over its private network. The petitioner stated that it was established in 1998, had twenty employees and gross annual income of \$2.8 million, and proposed to hire the beneficiary as a full-time accountant. The petitioner indicated that the beneficiary would work under the general direction of the company's operations manager and perform the following duties:

- Analyze financial information and prepare financial report.
- Assist in determining and maintaining record of assets, liabilities, profit and loss, tax liability and procedure utilizing MS Power Point and Excel.
- Assist in other financial and budgetary activities.
- Assist in preparing financial reports concerning operating procedures and determining financial status of the company and evaluating systems of recording costs.

In its subsequent response to the RFE, the petitioner listed the duties of the proffered position, and the percentage of time required by each, as follows:

- Making sure the compilation, reviews, and audits are in accordance with the generally accepted accounting principles – 40%.
- Assist in analysis and determination of company's tax compliance status – 30%.
- Determination and maintenance of records and liabilities – 10%.
- Assist in analysis of assessing the company's economic performance – 10%.
- Training and performance and accuracy of the payroll and accounting clerks – 10%.

According to the petitioner, the position requires a bachelor's degree in accounting, business administration, marketing, economics, or a related field. The petitioner asserts that the beneficiary is qualified for the position by virtue of her bachelor of commerce degree in 1996 from Beirut Arab University in Lebanon.

The director found that the duties described by the petitioner reflected the functions of an advanced level accounting clerk, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, rather than the duties of an accountant. The director cited information in the *Handbook* indicating that a baccalaureate degree is not a normal, industry-wide minimum requirement for entry into an accounting or auditing clerk position. There was no evidence that the petitioner normally required applicants for the position to have a baccalaureate degree in accounting or a related field, the director stated, and the record failed to establish that the duties and responsibilities of the position involved a level of complexity or authority beyond that normally encountered by an accounting or auditing clerk, or that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered 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. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). 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, Inc. v. Reno, id.*, at 1165-66.

On appeal, counsel reiterates the petitioner's contention that the proffered position is that of an accountant. Counsel contends that the position "requires analytical skills, ability to formulate fiscal reports from the database, presentation skills, and policy and procedure development skills" and is responsible for "advising the company's directors on the financial status of the organization." The position involves the supervision of two accounting clerks, counsel declares, whose responsibilities involve lesser duties such as basic bookkeeping, general ledger posting, receipt and disbursement ledgers, and payroll and tax deposit preparation. According to counsel the proffered position requires at least a baccalaureate degree. Additional documentation was submitted in support of this assertion, including labor market data and a series of internet job announcements for accountants.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

*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, 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.

Most accounting positions, as indicated in the *Handbook*, require a bachelor's degree in accounting or a related field. *See id.* at 70. Accountants, therefore, qualify as a specialty occupation under the Act.

By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

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.

*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. They also correct or note errors for accountants or other workers to adjust.

*Handbook, id.*, at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such 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.*

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is not the 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree, or its equivalent, in accounting or a related specialty. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field. The proffered position lacks crucial attributes of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare financial reports for nonmanagement groups like stockholders, creditors, regulatory agencies, and tax authorities. These functions are not reflected in the petitioner's description of the proffered position's duties. Though the petitioner indicates that the duties of the job include the supervision of two accounting clerks, a supervisory responsibility would not, in and of itself, elevate the position to that of an accountant or make it a specialty occupation. In reviewing the duties of the

proffered position, moreover, the AAO notes that a good percentage of them indicate that the employee will be assisting someone else in the task, which raises questions about the position's level of responsibility and scope of authority. Based on the evidence of record, the AAO concludes that the proffered position lacks both the breadth and the depth of a management accounting position.

In accord with the director's decision, the AAO determines that the duties of the proffered position, as described in the petitioner's various submissions, are those of an advanced bookkeeping or accounting clerk. Many of the duties – including the preparation of financial reports for management, keeping records of assets, liabilities, profits and losses, and other financial data, and overseeing payroll – accord with the *Handbook's* description of bookkeeping clerks in small establishments, who “handle all financial transactions and recordkeeping” and whose specific duties include such functions as recording all transactions, producing financial statements, preparing reports for supervisors and management, preparing bank deposits by compiling data from cashiers and verifying and balancing receipts, and keeping track of overdue accounts. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping or accounting clerk positions, though employers often require a two-year associate's degree in business or accounting.<sup>1</sup> Since bookkeeping and accounting clerks do not require a baccalaureate degree in accounting or a related specialty, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a bachelor's degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. The petitioner cites three officials from other companies who state that they employ accountants and require at least a bachelor's degree for the position. No documentation has been submitted showing the duties those individuals actually perform, however, or that those companies are similar to the petitioner in size and scale of operation. The petitioner has also submitted a series of internet job postings for accountant positions, but the AAO is not persuaded that those positions are parallel to the proffered position in this case since the duties of the proffered position are those of an advanced bookkeeping or accounting clerk. Furthermore, none of the advertisements provides any information about the size of the company or its scale of operations. Some of the companies are clearly much larger than the petitioner and, therefore, not similar organizations. Accordingly, evidence submitted by the petitioner on appeal does not establish that the proffered position qualifies as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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 (generally accepted accounting principles), forecasting, budgeting, cost accounting, and break even analysis, as well as developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping and accounting clerks.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As previously discussed, the AAO is not persuaded by the evidence of record that the duties of the position exceed the occupational scope of an advanced bookkeeping or accounting clerk, a position which does not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 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.