

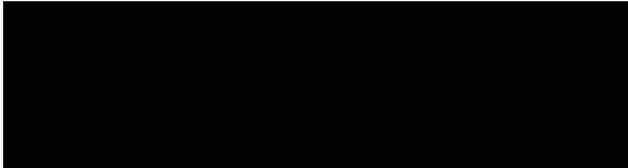


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

DZ



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUL 05 2007

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 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 director 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 bakery with three employees. It seeks to employ the beneficiary as an accountant. The director denied the petition because he determined the position was not a specialty occupation.

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 counsel's brief. The AAO reviewed the record in its entirety before issuing 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 (5<sup>th</sup> 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 March 26, 2003 letter of support accompanying the Form I-129; and the petitioner’s November 20, 2003 response to the director’s request for evidence. As described by the petitioner, the duties of the proffered position include:

- Cost management (50 percent of the beneficiary’s time) – prepare and maintain cost records and reports for use in controlling expenditures; provide management with cost information required to review direct and indirect costs; gather historical cost data on material purchases, labor, equipment depreciation, repairs, operating expenses, etc.; classify labor, materials and overhead costs to develop unit standard; supervise physical inventories to ensure accurate inventory counts; determine cost of sales and inventory evaluation for monthly close; and ensure that costs are allocated according to established procedures.
- Recording (15 percent of beneficiary’s time) – prepare and manage the company’s general ledger, accounts payable, accounts receivable, billing, payroll and benefits, monthly and annual close of books for financial statements on GAAP basis.
- Financial analysis (30 percent of beneficiary’s time) – prepare, coordinate and consolidate financial statements; prepare monthly analysis and support for business operations; participate in the coordination, review, and analysis of annual planning process; and use financial/quantitative techniques and analyses to support management decision-making.
- Auditing (15 percent of beneficiary’s time) – perform audit tasks to ensure compliance with company policy and regulatory laws by assessing effectiveness of controls, accuracy of financial records, and efficiency of operations as well as ensuring internal controls are in place; conduct interviews with staff to ensure recording of transactions and compliance with applicable laws and regulations; analyze data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, or lack of compliance with laws, government regulations, and management policies or procedures; and prepare acceptable working papers that record and summarize data on the assigned audit task.

- Budgeting (10 percent of beneficiary's time) – prepare annual budget, income statements, balance sheets and cash flow forecasts; analyze financial and statistical data for use in the development of all components of the annual budget and forecast; prepare, analyze and report variance issues and trends related to actual expenses as compared to the budget; and prepare ad hoc budget reports and models throughout the year.

In its response to the director's request for evidence, the petitioner also asserted that the proffered position resembled that of a financial controller.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO 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 the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner has identified its proffered position as that of an accountant or financial controller, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of these occupations. As stated at pages 68-69, 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 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 work of financial controllers, discussed under the occupation of financial managers in the *Handbook*, is described at pages 39-40:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies . . . .

The duties of financial managers vary with their specific titles, which include controller . . . . *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments . . . .

The director in his denial identified the duties of the proffered position as being more aligned with those performed by bookkeeping, accounting, and auditing clerks. This employment is described in the *Handbook* at pages 437-438:

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.

More advanced accounting clerks may total, balance, and reconcile billings vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

Having reviewed the duties of the proffered position and the discussion provided by the *Handbook*, the AAO, like the director, concludes that proffered position is most closely aligned to the occupation of bookkeeping, accounting and auditing clerks. Although the petitioner has characterized the duties of its position in terms of an accountant or controller, the beneficiary's responsibilities do not reflect the level of authority exercised by individuals in these occupations, nor the complexity of their management and planning roles. Accountants not only record and analyze financial data, they interpret it for the organizations that employ them. Moreover, they have responsibility for cost and asset management within these organizations. Financial controllers prepare financial reports and use them to forecast their employer's future financial position. They also direct a firm's investment activities and direct its cash management strategies. The duties of the proffered position, as described, do not give the beneficiary such responsibilities.

The description of the proffered position provided by the petitioner does not indicate that the beneficiary would have authority to direct or manage any aspect of its financial operations. Instead, the beneficiary's cost management, financial analysis, auditing and budgeting duties appear to be focused on developing the types of financial data and reports needed by the petitioner to manage the various aspects of its business operations. As a result, they more closely resemble the financial recordkeeping and reporting done by bookkeepers at the direction of management than the work performed by accountants or controllers.

On appeal, counsel states that the bookkeeping responsibilities of the beneficiary would require only 15 percent of her time and that the director ignored this fact in issuing his denial. The AAO is not persuaded by counsel's contention that bookkeepers' responsibilities are limited solely to the recording of financial information. Counsel too narrowly defines the responsibilities of "full-charge" bookkeepers, which, in the U.S. economy, can overlap the work traditionally handled by accountants. As noted at page 438 of the *Handbook's* discussion of the job outlook for bookkeepers, full-charge bookkeepers now perform many of the same duties as accountants.

Having determined the proffered position to be that of a bookkeeper, the AAO turns to the educational requirements of the occupation. The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping clerks:

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, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

As entry-level employment as a financial clerk may generally be obtained on the basis of a high school diploma, the AAO concludes that the proffered position of bookkeeper does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel references the Department of Labor's *Occupational Information Network (O\*Net)* and its assignment of a Job Zone 4 rating to the occupation of accountant, a rating identifying occupations that usually require a four-year baccalaureate degree. However, the proffered position is not that of an accountant. Therefore, the *O\*Net* information on which counsel relies is not probative for the purposes of this proceeding. The AAO also notes that the *O\*Net*, which replaced the *Dictionary of Occupational Titles*, is not a persuasive source of information as to 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 education, training, and experience required to perform the duties of that occupation. Further, a Job Zone 4 rating does not indicate that a bachelor's degree in a specific specialty is required.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may yet qualify it under one of the three alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), which have not yet been explored.

The petitioner has submitted no evidence to establish its employment as a specialty occupation under the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. Moreover, as the proffered position is newly created, the petitioner cannot establish it as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position.

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 those duties is usually associated with the attainment of a baccalaureate or higher degree. In response to the director's request for evidence, the petitioner contended that its proffered position was so specialized and complex that it required a baccalaureate in accounting, financial management, or a related field of study. It asserted that the position's duties required "the application of GAAP, methodological procedures and specialized theoretical knowledge with respect to data collection, classification and compilation, analysis of financial data, and exercise of judgment in preparing reports and making recommendations." However, the AAO's review of the petitioner's proffered employment finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by full-charge 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.