



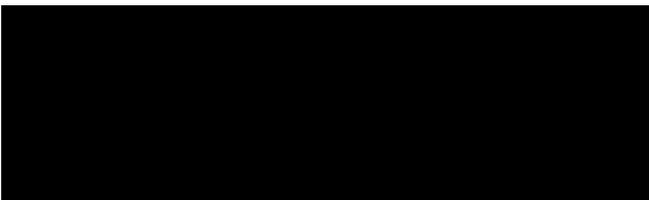
U.S. Citizenship  
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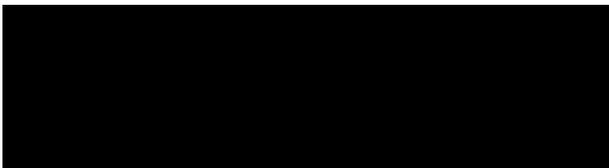


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

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.

*Elizabeth Wien*

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 creates acrylic sculpture, wall art and furniture and seeks to employ the beneficiary as a part-time 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 documentation.

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) counsel'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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail implementing an accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers; applying principles of accounting to analyze financial information and prepare financial reports; analyzing financial information detailing assets, liabilities and capital; compiling and analyzing financial information to prepare entries to the petitioner's accounts; detailing petitioner's assets, liabilities and capital including supporting documents to all reports; preparing and analyzing the petitioner's balance sheets, profit and loss statements, balance checks, payroll, tax remittances and other reports to summarize the petitioner's current and projected financial position; performing scheduled internal audits and special audits as dictated by management; preparing reports on results of scheduled audit and recommend changes in internal policies that will enhance efficiency in operations; preparing quarterly and yearly tax information; preparing documentation for the income tax for the end of the year; advising and recommending tax strategies to management; advising petitioner on advantages and disadvantages of certain business decisions or tax strategies or transactions. The petitioner stated that the person filling this position must be fully knowledgeable in the field of accounting and have practical experience.

The director determined that the proffered position was not a specialty occupation. The director indicated that some of the duties of the position described by the petitioner appear to reflect many of those performed by accountants as listed under Accountants and Auditors in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director indicated that sole reliance on a list of duties resembling those of an accountant taken from the *Handbook* to establish that the proffered position was an accountant was misplaced.

The director found the evidence failed to establish that the petitioner engages in the type of business that would require an accountant on a regular full-time or part-time basis, for any significant length of time. The director noted that the petitioner already has an accounting professional – the finance and administrative officer to review and report on the company's records. The director concluded that there is no reasonable expectation that the petitioner's business would utilize the beneficiary solely in the capacity as a part-time accountant or auditor exclusively in the review, analysis, and reporting of the petitioner's accounting records. The director found that the duties of the proffered position are more those of a bookkeeper or accounting clerk or auditing clerk. Additionally, the director noted that the petitioner applied for and subsequently received an approval for the services of an H-1B budget analyst for the wage of \$39,291.00. The petitioner submitted documents that indicate the annual wage paid for this position was \$18,134 in annual salary; therefore, the director questioned the veracity of the petitioner's assertions.

On appeal, counsel states that the proffered position, an accountant, is a specialty occupation. Counsel explains that a combination of duties that encompasses both professional and clerical duties should not automatically disqualify a position from being considered a specialty occupation. Counsel admits that the petitioner never provided a percentage breakdown of the beneficiary's duties but contends it is obvious from the evidence that the "overwhelming list of duties she is to provide [the petitioner] is that of an accountant described in the [*Handbook*]." Additionally, counsel explains that the petitioner is in the best position to determine its needs, including the business need for a part-time accountant. Counsel contends that the internet job postings offer clear proof that industries outside those listed by the director routinely hire full-

time and part-time accountants. Finally, counsel asserts that the petitioner should have been given the opportunity to address the director's reservations as to the validity of the petitioner's statements.

As noted above, the director found that the petitioner previously petitioned for, and received approval for, the services of an H-1B budget analyst who was to be paid the prevailing wage of \$39,291.00. The petitioner's organizational chart lists the salary of this analyst by name and indicates that it pays \$18,134.00, or \$21,157.00 less the annual wage stated on the petition. Additionally, the director notes that not all of the previously approved H-1B beneficiaries are on the petitioner's organizational chart, W-2s or payroll data and that CIS has not received written withdrawals from the petitioner for these employees.

Counsel contends that because the director first raised its concerns regarding the petitioner's previous H-1B petitions in its denial, the director's concerns about the discrepancies should be "stricken from the record". However, the AAO reviews evidence submitted on appeal and notes that the petitioner has the opportunity to explain any inconsistencies in the record on appeal. Neither counsel nor the petitioner have chosen to address the director's concerns during this appeal, or to explain the discrepancies noted by the director. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

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.

A review of 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, 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.

Very few of the duties described in the *Handbook* 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, cost management, 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* states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The record shows that the petitioner is an acrylic products manufacturer which employs a finance and administrative officer as well as a budget analyst and earns a gross annual income of \$3.1 million. Counsel cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional. The petitioner's level of income, however, has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of \$3.1 million differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients.

Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. As noted above, counsel admits that the petitioner never provided a percentage breakdown of the beneficiary's duties but contends it is obvious from the evidence that the "overwhelming list of duties she is to provide [the petitioner] is that of an accountant described in the [*Handbook*]." This statement is not persuasive. The *Handbook* reveals that the director properly concluded 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 implementing an accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers; preparing reports on results of scheduled audit and recommend changes in internal policies that will enhance efficiency in operations; preparing quarterly and yearly tax information; preparing documentation for the income tax for the end of the year. Such 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, reconcile billing vouchers, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll.

As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports 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.<sup>1</sup>

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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, forecasting, budgeting, cost accounting, break even analysis, 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 would provide knowledge about general accounting principles and accounting techniques which serve the needs of management and facilitate decision making.

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submitted several internet job posting for the position of accountant. However, the internet postings do not provide sufficient information to determine the size of the advertising companies; therefore it cannot be concluded that a specific degree requirement is common to the industry in parallel positions among similar organizations or 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). As already discussed above, the *Handbook* reveals that many of 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 petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests. It cannot be concluded 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. Counsel contends that the petitioner is in the best position to determine the petitioner's business needs including its need to employ a part-time accountant. Counsel asserts that the petitioner's past growth and hopes for future growth requires the services of a part-time accountant and that hiring outside accountants is both expensive and inconvenient when the petitioner needs immediate answers to financial questions. The petitioner's strategy for expanding its business cannot substitute for a description of the specific duties to be performed by the beneficiary. The petitioner submits no documentation in support of its plans for future growth. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not demonstrated that the duties of the proffered position meets the complexity or scope of responsibility normally required of an accountant. 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.

Beyond the decision of the director, the petitioner has not provided evidence that the beneficiary is qualified to perform services in a specialty occupation. The petitioner asserts that the beneficiary has a baccalaureate degree in accounting and has provided a copy of the beneficiary's degree from a foreign university. However, the petitioner has not provided evidence that establishes the beneficiary holds a foreign degree determined to be the equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university pursuant to 8 C.F.R. § 214.2(h)(C)(2). Thus, the record does not establish

that the beneficiary is qualified to perform services in a specialty occupation. For this additional reason, the petition may not be approved.

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.