

Identifiable data deleted to
prevent invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PHOTOCOPY

DA

JUN 14 2005

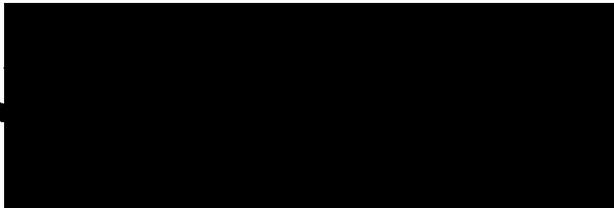


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann

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 operates as a restaurant management company managing a single restaurant and 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.

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 full-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 be assisting management in all phases of the accounting cycle dealing with the production of various financial reports, including examination and analyses of the petitioner's accounting records and data for purposes of projecting and coping with the demands of its financial, budget and all other relevant accounting requirements; preparing complex financial reports in a timely and accurate manner, performing variance analyses; analyze past and present financial operation, trends and costs as well as estimated and realized revenues, to prepare budget and project future revenues and expenses; interpret financial data to advise management on matters involving effective use of resources and budget forecasts; audit contracts, orders, vouchers, and preparing reports to substantiate individual transactions prior to settlement; analyze and compile financial information to prepare entries to account, such as general ledger account, including but not limited to the writing and maintenance of general ledger reports, preparation of journal entries, account analysis and reconciliation; prepare balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position; establish, modify, and document the implementation of accounting control procedures; and perform all other booking and accounting tasks such as filing and documenting financial data and records which may be incidental to the beneficiary's duties as an accountant. The petitioner indicated that in order to satisfactorily perform the duties the beneficiary must have a baccalaureate or higher degree in the field of accounting.

The director issued a request for evidence including a more detailed description of the work done, including specific job duties, percentage of time to be spent on each duty, level of responsibility, hours per week of work, types of employees supervised, and the minimum education, training and experience to do the job. In response counsel for the petitioner indicated the beneficiary would be responsible for providing the analysis, evaluation and examination of all accounting data to ultimately plan and project the petitioner's financial and budget position. Counsel stated that the percentage of time to be spent on each duty is as follows:

- 20% prepare complex financial reports in a timely and accurate manner, performing variance analyses;
- 10% analyze past and present financial operation, trends and costs as well as estimated and realized revenues, to prepare budget and project future revenues and expenses;
- 10% interpret financial data to advise management on matters involving effective use of resources and budget forecasts;
- 10% audit contracts, orders, vouchers, and preparing reports to substantiate individual transactions prior to settlement;
- 10% analyze and compile financial information to prepare entries to accounts, such as general ledger accounts detailing assets, liabilities, and capital;
- 10% analyses of general ledger account, including but not limited to the writing and maintenance of general ledger reports, preparation of journal entries, account analysis and reconciliation;
- 10% prepare balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position;
- 10% establish, modify and document the implementation of accounting control procedures; and

- 10% perform all other bookkeeping and accounting tasks such as filing and documenting financial data and records which may be incidental to the beneficiary's duties as accountant.

The director determined that the proffered position was not a specialty occupation. The director referred to the petitioner's organizational chart and noted that no bookkeepers or accounting clerks were listed. The director found that this indicates that there are not enough employees to actually perform the most basic accounting and bookkeeping duties. The director noted that if the petitioner gives the title of accountant to an employee who performs some accounting duties but is also performing basic bookkeeping and accounting clerical duties, then CIS cannot consider the proffered position to be an auditor or accountant. Referring to the petitioner's description of the position's duties, the director stated that a significant amount of the beneficiary's time will be spent performing many of the duties of a bookkeeper and an accounting clerk, duties that do not require a bachelor's degree. The director stated that a review of the evidence indicates that the duties and responsibilities do not meet the complexity or scope of responsibility normally required of an accountant.

On appeal, counsel states that the proffered position, accountant, is a specialty occupation. Counsel contends that the petitioner has established a bona fide need for the specialty occupation of accountant as shown by the complexity of its organizational set-up. Counsel asserts that the complexity of the petitioner's day-to-day cash flows and business transactions demand the services of an in-house accountant. Counsel contends the nature of the specific duties pertaining to the position of accountant is so specialized and complex that satisfactory performance "must necessarily be associated with the attainment of a baccalaureate or higher degree in the occupational field." Counsel contends that only 10% of the beneficiary's duties would be apportioned to bookkeeping and accounting clerk tasks. Counsel contends that the proffered position is "primarily aimed to provide [the petitioner] with the professional expertise in assisting management in all phases of the accounting cycle, dealing with the production of various financial reports, including examination and analyses of company's accounting records and data for purposes of projecting and coping with the demands of [its] financial budget and other relevant accounting requirements."

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 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 Department of Labor's *Occupational Outlook Handbook (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*, 764 F. Supp. 1095, 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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The director's reference to the *Handbook's* description of a management accountant underscores the differences between the proffered position and a management accountant. While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

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 operates as a restaurant management company managing one restaurant and indicated on the Form I-129 a gross annual income of 2 million dollars. Counsel cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional. Responsibility for income of \$2 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. Additionally, the record does not contain evidence establishing the petitioner's income. Though the director requested copies of the petitioner's tax returns for 2000, 2001, 2002, counsel explained that the petitioner's operation commenced only from acquisition of the franchise operation in May 14, 2003 and had yet to file income taxes. The petitioner instead submitted a copy of the general excise tax return for the State of Hawaii for month of May 2003. The petitioner's level of income, however, has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. 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)).

Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. 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 prepare balance sheet, profit and loss statements and other reports to summarize current and projected company financial position; perform analyses of general ledger accounts, including but not limited to the writing and maintenance of general ledger reports, preparation of journal entries, account analysis and reconciliation. 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.

Counsel states that the beneficiary would be responsible for providing the analysis, evaluation and examination of all accounting data to ultimately plan and project the petitioner's financial and budget position. 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.¹

¹ According to the website for Skyline College, a community college located in San Mateo, California, (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

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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submitted three job postings. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) plainly states that the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner, therefore, must demonstrate that organizations similar to itself have positions that are parallel to its position and furthermore that such positions have the same degree requirement. The postings are not persuasive for various reasons. Kforce, Adept Resources and Search Finance Group are staffing agencies and therefore the AAO is unable to determine the nature of the contracting employers. The duties of the posting from Kforce notes the position is part of an accounting team and states that a Bachelor's degree is highly preferred but does not state that it is required. The posting from Search Finance Group notes that this position requires extensive interaction with an operating group in the field, doing analysis and answering questions. The petitioner cannot demonstrate that these organizations are similar to itself. The job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by bookkeepers and accounting clerks, positions which do not require a bachelor's degree in a specific specialty.

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 regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision making.