



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



D2

FILE: WAC 02 172 51676 Office: CALIFORNIA SERVICE CENTER Date: JUN 13 2005

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, Director
Administrative Appeals Office

DISCUSSION: The 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 chiropractic clinic that seeks to employ the beneficiary as an accountant. The petitioner 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) 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 I-129 petition; the petitioner's April 22, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: directing implementation of a general accounting system for keeping accounts and records of disbursements, expenses, assets and income collection; preparing, analyzing and verifying the quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports and financial statements; handling the preparation of the petitioner's general ledger, monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information to prepare entries into the petitioner's accounts; detailing the petitioner's assets, liabilities and capital; advising management and recommending tax strategies and the advantages and disadvantages of certain business decisions; devising a financial system that will assist the petitioner to establish a more systematic and smooth inventory process; preparing the petitioner's balance sheets, profit and loss statements, necessary checks, payroll, tax remittances and other reports to summarize the petitioner's current and projected financial position; modifying and coordinating implementation of the accounting and accounting control procedures; monitoring the petitioner's budgeting, performance evaluation, cost and asset management; preparing the petitioner's letter correspondence with existing and prospective clients regarding transactions, financing and billing statements; and analyzing the petitioner's transactions and preparing billing statements. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or a related field.

The director found that the proffered position was not a specialty occupation because it was more like a bookkeeper than an accountant. The director also stated that the petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, counsel asserts that the petitioner has a reasonable need for an accountant, a position that is a specialty occupation. Counsel also states that CIS should not deny a petition based on an issue that was not raised in the director's request for evidence. The AAO agrees that an accountant is generally considered to be a specialty occupation. The issue to be resolved is whether the proffered position is actually that of an accountant.

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 turns first 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; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. 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. Counsel states that the director determined that some of the duties described in the petition are those of an accountant. The AAO disagrees with the director on this issue; the duties of the proffered position are those of a bookkeeper or accounting clerk.

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 director's reference to the *Handbook's* description of a management accountant underscores the differences between the proffered position and a management accountant. 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 is a chiropractic clinic with 1 employee and earns a gross annual income of \$50,000. The petitioner's level of income has a direct and substantial bearing on the scope and depth of the

beneficiary's proposed duties. Responsibility for income of \$50,000 differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients.

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 record keepers. 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 direct implementation of a general accounting system for keeping accounts and records of disbursements, expenses, assets and income collection; prepare, analyze and verify the quarterly and yearly tax returns; perform audits; prepare payroll statements and deductions, monthly expense reports and financial statements; handle the preparation of the petitioner's general ledger, monthly and yearly financial reports; monitor information systems; compile and analyze financial information to prepare entries into the petitioner's accounts; detail the petitioner's assets, liabilities and capital; advise management and recommend tax strategies and the advantages and disadvantages of certain business decisions; devise a financial system that will assist the petitioner to establish a more systematic and smooth inventory process; prepare the petitioner's balance sheets, profit and loss statements, necessary checks, payroll, tax remittances and other reports to summarize the petitioner's current and projected financial position; modify and coordinate implementation of the accounting and accounting control procedures; monitor the petitioner's budgeting, performance evaluation, cost and asset management; prepare the petitioner's letter correspondence with existing and prospective clients regarding transactions, financing and billing statements; and analyze the petitioner's transactions and preparing billing statements.

Counsel states that the beneficiary's duties will enable the business to grow, as she will ascertain the financial status of the company and will recommend, develop and maintain solutions to business and financial problems. 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 to advance the business. 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

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.

There is no evidence in the record regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. As noted above, the position description lacks detail about how the beneficiary would perform this position; therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

An H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). In this case, the petitioning entity states that it is a chiropractic clinic with one employee, and that it has a gross annual income of \$50,000. The petitioner claims that it will employ the beneficiary as a part-time accountant,

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, generally accepted accounting procedures (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 the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

but it has not proved that the beneficiary will be coming to the United States to perform services as an accountant.

Counsel asserts that the director erred in basing his decision on an issue that was not raised in his request for evidence, e.g., that the petitioner does not require the services of an accountant. The AAO notes that the director is required to issue a request for evidence only when initial evidence or eligibility information is missing. 8 C.F.R. § 103.2(b)(8). As the record does not reflect that initial evidence or eligibility information was missing from the original filing, the director was not required to address this issue in his request for evidence. Thus, the director's decision, partially based on issues that were not included in the request for evidence, did not constitute reversible error. The petitioner had an adequate opportunity to address these issues on appeal, which the AAO has considered.

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.