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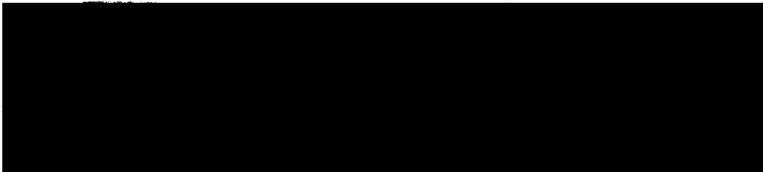
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JUN 22 2005

FILE: WAC 03 047 55057 Office: CALIFORNIA SERVICE CENTER Date:

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.

for Michael T. Kelly
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 wholesaler of telecommunications products. It has apparently undergone an ownership change since the petition was filed, though there is no documentation thereof in the record. The petitioner seeks to employ the beneficiary as an auditor/accountant and to classify him 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 requests for evidence (RFEs); (3) the petitioner's responses to the RFEs; (4) the notice of

decision; and (5) Form I-290B and an appeal brief. 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 telecommunications company established in 1999 with 19 employees and gross annual income in 2002 of \$35 million. Its business is primarily the wholesale distribution of phone cards, particularly to Filipino communities in the United States. To accommodate its expanding business the petitioner stated that it wanted to hire the beneficiary as a part-time auditor/accountant, working 25 hours per week, to perform the following tasks: set up accounting systems and provide analysis of net worth, expenditures, income and liabilities; keep abreast of day-to-day operations; perform on-site auditing services; conduct a thorough examination and analysis of the account books focusing on the cash flow transactions; prepare management operation reports, budgets, cash flow projections, comparative studies, and other spreadsheets to procure funds and create marketing strategies; inspect ledger entries to insure proper procedures are being followed; and recommend changes to improve operations. The petitioner declared that the beneficiary was qualified for the position by virtue of her bachelor of science degree in accountancy, granted by the Philippine School of Business Administration, Inc. in Quezon City, the Philippines, in March 1996.

In response to the director's second RFE the petitioner summarized the duties of the proffered position and the percentage of time required by each set of duties as follows:

- Financial analysis cost accounting; application of principles of accounting to analyze financial information and prepare financial reports; preparation of balance sheets, profit and loss statements and other reports to summarize current and projected company revenues – 55%.
- Preparation and analysis of monthly, quarterly, and yearly tax returns; preparation of sales tax and payroll tax schedules; and remittance of taxes – 15%.
- Preparation of cash flow projections; utilization of variance analysis to evaluate the company performance, budget planning; analysis of financial information to detail company assets, liabilities, and capital; and implementation of internal accounting controls – 30%.

In his decision the director found that the preponderance of the duties to be performed by the beneficiary would be those of a bookkeeping, accounting, 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 based this finding on the petitioner's organizational chart and job descriptions indicating that the accounting department had five positions with various accounting functions, that some of the positions included bookkeeping or accounting clerical duties, and that no positions were specifically dedicated to the performance of basic accounting, clerical, and bookkeeping duties. Noting that the petitioner already had two other accounting professionals superior to the proffered position performing accounting functions, the director determined that the record failed to establish the petitioner would also be utilizing the beneficiary in the primary capacity 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 a bookkeeping, accounting, or auditing clerk position, and concluded that the record failed to show that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level

of education. The director ruled that the proffered 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).

On appeal counsel asserts that the petitioner's bookkeeping and accounting clerk functions are performed by an accounting assistant – one of the five positions listed in the accounting department – and that the beneficiary would be engaged exclusively in the review, analysis, and reporting of the petitioner's accounting records. Counsel acknowledges that all positions in the accounting department perform some clerical tasks, and that the accounting manager in particular is responsible for the preparation of payroll statements and monthly expense reports, but contends that the responsibilities of the proffered auditor/accountant position are primarily accounting in nature. They include such duties as reviewing the balance sheet, profit and loss statements, and financial reports submitted by the accountant, which are then forwarded to the controller before submission to management. According to counsel, a bookkeeping or accounting clerk would be ill-equipped to analyze financial documents and synthesize data into financial reports for management. Counsel maintains that the petitioner's volume of business, measured by its gross annual income and the multitude of clients for its phone cards, necessitates the services of an accountant to analyze and report on the financial data recorded by the accounting assistant.

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.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant and internal auditor appear 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.

Internal auditors verify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. Internal auditors examine and evaluate their firms' financial

and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations – evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations . . .

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 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 petitioner lists five positions on its organizational chart with accounting-related functions – including a controller, an accounting manager, two accountants (both currently unfilled), and an accounting assistant. Though the accounting manager is above the two accountants in the hierarchical chain, that fact is not reflected in the accompanying job descriptions, in which the duties of the accounting manager are listed as (1) preparing quarterly and annual tax records, payroll statements and deductions, monthly expense reports and financial statements, (2) maintaining general ledger including reconciling general ledger accounts, and (3) processing payables, cash receipts, bank deposits, and reconciling cash. Though counsel asserts on appeal that the accounting manager is also responsible for reviewing the balance sheet, profit and loss statements, and financial reports submitted by the accountant, those duties are not listed in the previously submitted job descriptions. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.* Assuming counsel's assertion on appeal is correct, the accounting manager would have primarily accounting duties and be responsible for all of the work produced by the beneficiary in the proffered position. Furthermore, the proffered position would be subordinate to both the controller and the marketing manager in its accounting-related duties. Viewed in that hierarchical context, the duties of the proffered position appear to lack both the substantive depth and the breadth of responsibility of a management accounting or internal auditor position, as described in the *Handbook*.

The AAO agrees with the director that the duties of the proffered position, as described in the petitioner's various submissions, are those of an experienced bookkeeping, accounting, or auditing clerk. Many of the duties – including the preparation of financial reports, balance sheets and profit and loss statements, monitoring daily business operations and the recordation thereof, and the examination of ledger entries to ensure proper procedures – accord with the *Handbook's* description of bookkeeping, accounting, and auditing clerks. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, and auditing clerk positions, though employers often require a two-year associate's degree in business or accounting.¹ Considering the nature and scale of the

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

petitioner's business, its organizational structure, and the duties of the proffered position, the AAO concludes that it is a combination bookkeeping, accounting, and auditing clerk position. Since a baccalaureate degree in accounting or a related specialty is not required for such a position, 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), there is no evidence in the record that a bachelor's degree in accounting or a related specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record show that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting or a related specialty. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 experienced bookkeeping, accounting, or auditing 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.

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.