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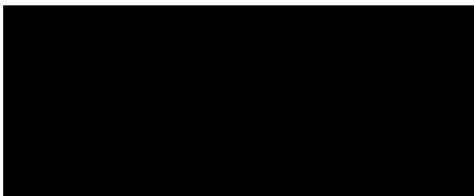


U.S. Citizenship
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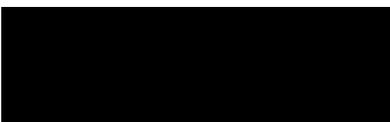
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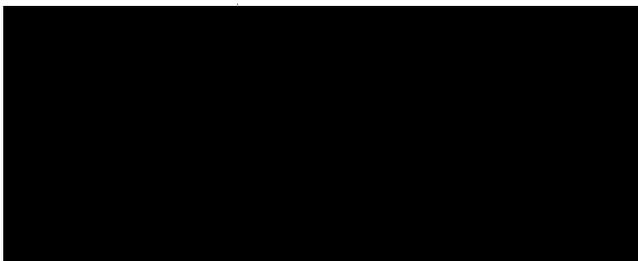
FILE: WAC 02 173 52669 Office: CALIFORNIA SERVICE CENTER Date:

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 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 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 is a pharmacy (retail) that 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.

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 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 the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing, implementing, modifying, and documenting budgeting, cost, general, property, and tax accounting systems; forecasting revenue and expenditures and submitting the data to management; computing taxes; preparing profit and loss reports and financial statements; analyzing business operations; maintaining a computerized general accounting system for keeping accounts and records of disbursements, expenses, tax payments, and general ledgers; preparing reports about the company's financial position in areas of income, expenses, and earnings, budgets; budgeting and financial forecasting; advising about insurance coverage; helping to prepare income tax returns; and compiling time and payroll data. The petitioner stated that the beneficiary is qualified for the proffered position because she holds the equivalent to a U.S. bachelor's degree in business administration with a specialization in accounting.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position's duties are similar to those of bookkeeping and clerking positions, occupations that do not require a baccalaureate degree. The director stated that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field, and that the petitioner's business does not require the services of a corporate accountant as described in the *Handbook*. The director found that the proffered position did not require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. The evidence of record, the director stated, did not show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the proffered position resembles an accountant as described in the *Handbook*. Whether the beneficiary is a member of an executive team, counsel asserts, does not determine whether the proffered position parallels that of an accountant. Counsel states that an employee that prepares and analyzes a company's financial data is a management accountant, regardless of whether the accountant is part of an executive team. Counsel states that accountants could only work in large corporations, not smaller businesses, if they must be part of an executive team. Counsel states that the beneficiary's duties enable management to make sound business decisions, which is a primary function of an accountant. A bookkeeper, counsel states, does not have the expertise to analyze and prepare reports to inform management of current and projected revenues. Further, counsel states that a bookkeeper does not have knowledge of generally accepted accounting principles (GAAP); that bookkeeper duties are primarily clerical in nature; and that an accountant's duties require analysis and understanding of accounting principles. Counsel states that even if some of the beneficiary's duties overlap with those of a bookkeeper, the beneficiary's primary duty is to perform accounting work. Part of an accountant's daily responsibilities, counsel states, may include incidental bookkeeping functions; however, counsel maintains that the position remains that of an accountant.

Referring to the *Handbook*, counsel states that accounting clerks are described as compiling invoices and checks and verifying transactions. An accountant, counsel states, analyzes financial documents, projects revenues, and advises on tax strategies and business transactions; counsel assigns these tasks to the beneficiary. Counsel cites to a court decision to state that the petitioner's size bears no rational relationship to the need for a professional. Counsel maintains that the petitioner's assets in the form of cash, accounts receivables, and inventory requires it to hire an in-house accountant in order to determine the petitioner's ability to pay current liabilities based on the total value of the assets. A bookkeeper, counsel contends, does not have the knowledge to forecast a company's ability to pay its debts from an analysis of the current assets. Counsel states that the petitioner's fluctuating income requires the services of an accountant to arrange for budgeting and income fluctuation. Counsel contends that the director is not in the best position to evaluate the petitioner's needs, and that using an accountant on an as needed basis will not meet the petitioner's 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 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. 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 is a pharmacy with 5 employees and earns a gross annual income of \$1.1 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 \$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. 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 compute taxes; prepare profit and loss reports and financial statements; maintain a computerized general accounting system for keeping accounts and records of disbursements, expenses, tax payments, and general ledgers; prepare reports about the company's financial position in areas of income, expenses, earnings, and budgets; help to prepare income tax returns; and compile time and payroll data. 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's duties enable management to make sound business decisions, which is a primary function of an accountant, and that that the proffered position requires knowledge about the GAAP. 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. 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 knowledge about the GAAP 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.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. 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 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.