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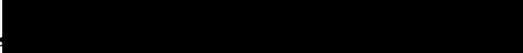
U.S. Citizenship
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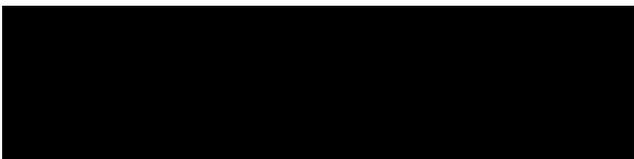


FILE: WAC 02 259 54529 Office: CALIFORNIA SERVICE CENTER Date:

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

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 dental office that 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) 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 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 preparing the general ledger and monthly and yearly financial reports; monitoring the information system; compiling and analyzing financial information to prepare entries to company accounts; detailing assets, liabilities, and capital; advising and recommending tax strategies; maintaining the inventory of supplies and developing a financial system to provide more systematic and smoother inventory procedures; preparing balance sheets, profit and loss statements, checks, payroll, W-2 and 1099 forms, and tax remittances; preparing reports to summarize the company's current and financial position; modifying and coordinating the implementation of accounting and accounting control procedures; overseeing budgeting, performance evaluations, and cost and asset management; and preparing business letters to clients regarding financing and billing statements. The petitioner stated that it wishes to employ the beneficiary based on her educational degree, a bachelor of science in accountancy from an institution in the Philippine Islands, and experience.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position is more akin to a bookkeeper, an occupation that does not require a bachelor's 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 evidence of record is not persuasive to 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 is similar to an accountant as described in the *Handbook*. Counsel states that a bookkeeper performs steps that are mechanical in nature; an accountant's are less mechanical and more subjective. Counsel narrates the beneficiary's duties and states that the petitioner requires the services of an accountant, not a bookkeeper. Referring to the submitted job postings, counsel states that the companies are like the petitioner because they have the same incomes. According to counsel, the use of the term "similar" by the court in the case of *Matter of Caron International, Inc.*, 19 I&N Dec. 791, (Comm. 1988) implies that a company can have similar qualities, but it does not have to match every aspect of the petitioner. Counsel asserts that a review of the job postings reveal that all companies require their accountants to possess a baccalaureate degree. Analyzing financial information and preparing financial reports, counsel states, is typically associated with the attainment of a baccalaureate or higher degree in accounting or a related field. Counsel further states that accountants give tax advice; prepare corporate tax returns; and create, implement, and supervise accounting systems. Such duties, counsel asserts, cannot be performed by a bookkeeper.

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 cannot determine whether this is a part-time position. The Form I-129 indicates the beneficiary's position is part-time, ranging from 20-30 hours. On page four of the company letter dated August 6, 2002, the petitioner stated that the position is for a "part-time" accountant. Yet, the petitioner's letter dated April 21, 2003, stated that the position "will be a 40plus-hour work per week job," and the letter dated June 5, 2003 stated that the beneficiary "will work 40 hours per week." 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, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains or reconciles this inconsistency.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Counsel states that the beneficiary's duties are performed by an accountant. The *Handbook* discloses that the proffered position's duties do not rise to the level of an accountant. 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, and cost 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.

Some of the duties described in the *Handbook* do not 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. 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* further 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, a dental office, employs 5 persons, and earns a gross annual income of \$450,000; given this context, it is very unlikely that the petitioner would require the services of an in-house accountant. As the *Handbook* shows, many accountants and auditors worked for accounting, tax preparation, bookkeeping, and payroll services firms or were self-employed. Although counsel's June 5, 2003 letter relied on a case to state that the size of the petitioning entity is not relevant in determining whether a position qualifies as a specialty occupation, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of only \$450,000 differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

A review of the *Handbook* reveals that the director properly determined that many 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 sheets, profit and loss statements, the general ledger, checks, payroll, W-2 and 1099 forms, tax remittances, and monthly and yearly financial reports; compile financial information to prepare entries to company accounts; detail assets, liabilities, and capital; maintain the inventory of supplies; prepare reports to summarize the company's current and financial position; and prepare business letters regarding financing and billing statements. Such duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports, handle accounts payable and receivable, prepare invoices, verify records of transactions, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll. Similar to the beneficiary who will set up a bookkeeping system, the *Handbook* notes the growing use of financial software to enter and manipulate data.

The *Handbook* states 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, 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 accounting techniques that serve the needs of management and facilitate decision making. Accordingly, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel states that the use of the term "similar" in *Matter of Caron Int'l* implies that a company can have similar qualities, but it does not have to match every aspect of the petitioner. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) indicates that the organizations must be *similar* to the petitioner. None of the employers in the postings are similar in nature to the petitioner, a dental clinic. Act 1 and Toyota are in the automobile industry, Midnite Express is a delivery company, Sprague & Associates is a manufacturing company, and Homestore, Inc. is a technology company. No information is provided about the companies represented by Accountants Inc. and Accounting Advantage.

Therefore, the postings fail 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, 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, and that the proffered position's duties do not rise to the level of those of an accountant.

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 *Handbook* describes the proffered position's duties as analogous to those of bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. There is no evidence in the record that would show that the proffered position's duties rise to the level of an accountant. Consequently, the petitioner 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.