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FILE:



Office:

CALIFORNIA SERVICE CENTER



Date:

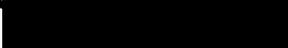
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IN RE:

Petitioner:

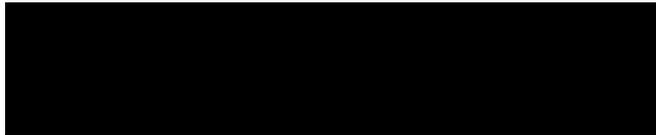


Beneficiary:



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.

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 provides room, board, and non-medical health care to the elderly. It seeks to employ the beneficiary as an 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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. 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 provider of room and board and non-medical health care to the elderly in three facilities located in the Greater Los Angeles area. The petitioner stated that its business was established in 1999, had eight employees and estimated gross annual income of \$500,000 (actual income was only \$404,000 in 2002, as recorded in a subsequently submitted federal tax return for that year), and expected to open additional facilities. The petitioner proposed to hire the beneficiary as a full-time accountant for the declared purpose of "directing and controlling our company's accounting activities." In its response to the RFE the petitioner described the proffered position as follows:

[The beneficiary] will plan, organize, direct and control all accounting activities to include recording of financial transactions of the company, preparation of accounting entries, reconciliation of general ledger accounts, analysis of the company's financial performance, adjusting journal entries as needed, preparation of budget, cash management, etc. He will troubleshoot day-to-day anomalies of accounting [and] prepare and interpret financial statements and other reports as required by management such as balance sheets (assets/liabilities), cash management, budgets/forecast, etc. He will prepare payroll, calculate withholding taxes and prepare quarterly reports to state and federal governments . . . assist in federal and state tax returns [and] record entries in accordance with generally accepted accounting principles.

The petitioner declared that the position required the services of a professional with a bachelor's degree, majoring in accounting, and at least two years of work experience in the field. The record indicates that the beneficiary earned a bachelor of science in commerce degree, with a major in accounting, from Holy Angel University in the Philippines on May 28, 1983, and that she worked as an account executive for a Filipino company, [REDACTED] to March [REDACTED] and from May 1995 to August 1999.

The director found that the duties of the proffered position described by the petitioner reflected the duties of a bookkeeping or accounting clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, rather than the duties of an accountant. The director cited information in the *Handbook* indicating that a baccalaureate degree is not a normal, industry-wide minimum requirement to enter into a bookkeeping or accounting clerk position. In the director's view, the petitioner's business lacked the organizational complexity and scale of operations to warrant the services of a full-time in-house accountant. The petitioner did not demonstrate unique and specific needs for the services of an accountant, the director declared, or show that the duties of the position could not be performed by a bookkeeping or accounting clerk. The director concluded that the 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 duties of the proffered position involve complex accounting functions that require the expertise of an accountant and cannot be performed by a bookkeeping or accounting clerk. Explaining the discrepancy between the petitioner's claim to have eight employees and the listing of just three employees on the petitioner's quarterly wage and withholding report in California, counsel indicated that the petitioner supplements its three-employee staff with contract workers whose numbers constantly fluctuate. The contract workers are care-givers providing 24-hour a day service, in eight-hour shifts, at the petitioner's four residential facilities (the fourth was apparently opened in 2003). Counsel

estimates that at least 12 care-givers are working every day of the week and, since they are all part-time, as many as many 20 may be working on a contract basis at any given time. Counsel asserts that the petitioner previously employed a full-time accountant from October 2000 to July 2002.

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, 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 appears 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.

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 standard, 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 accounting or a related specialty field. As previously noted, the petitioner has three employees, gross annual income of a little over \$400,000, and a complement of part-time contract workers. Though the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with an annual income of \$400,000 differ greatly from the responsibilities associated with an annual income in the millions, or tens of millions, as well as from the responsibilities of accountants working for multiple clients.

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 or accounting clerk. Many of the duties – including the recordation of all financial transactions, reconciling general ledger accounts, analyzing the company's financial performance, preparing financial statements and reports for management, and preparing payroll including the calculation of withholding taxes – accord with the *Handbook's* description of bookkeeping clerks in small establishments, who “handle all financial transactions and recordkeeping” and whose specific duties include such functions as recording all transactions, posting debits and credits, producing financial statements, preparing reports for supervisors and managers, and handling payroll. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping and accounting clerk positions, though employers often require a two-year associate's degree in business or accounting.<sup>1</sup> Considering the nature of the petitioner's business, the scale of its operations, and the duties of the position, the AAO concludes that the proffered position is a bookkeeping or accounting clerk. Since bookkeeping and accounting clerks do not require a baccalaureate degree in accounting or a related specialty, 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), the petitioner has not submitted any evidence that a bachelor's degree in accounting or a related specialty is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, counsel asserts on appeal that the petitioner previously employed an accountant from 2000 to 2002. The record contains no documentation of any such employee, however, or of the educational credentials of such individual. Mere assertions by counsel, without documentary evidence, will not satisfy the petitioner's burden of proof. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The AAO also notes that if a prior employee was performing duties akin to those described for the proffered position in this petition, they would constitute the duties of a bookkeeping or accounting clerk, not an accountant. Accordingly, the record does not establish that the petitioner normally requires a bachelor's degree in a specific specialty or its equivalent for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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 (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.

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 or accounting clerk, positions which do 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.