

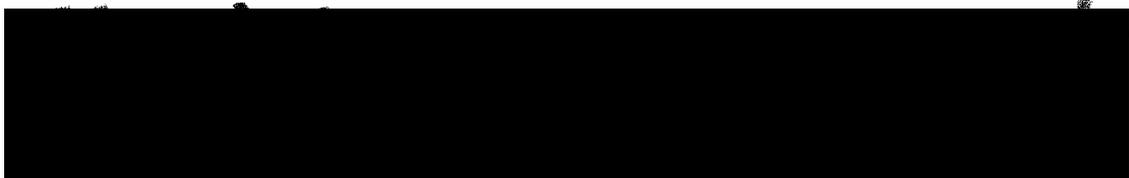
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**U.S. Citizenship
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Services**

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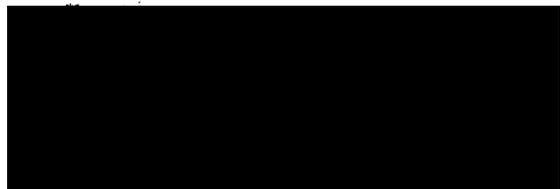
FILE: WAC 03 073 53484 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 2005**

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 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 specialty care organization 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, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation. Counsel also contends that the director's denial was "an arbitrary abuse of discretion, warranting reversal."

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a specialty care organization with three employees, was established in 2002 and has a gross annual income of approximately \$230,400. It proposes to hire the beneficiary as a accountant. In its letter of support submitted with the initial filing, the petitioner set forth the duties of the proposed position as follows:

Preparation and analysis of financial statements, and accounts payable and receivable; tax assistance; audit of inventory and equipment costs; and analysis of financial data and business operations for the purpose of making recommendations and devising more cost-efficient methods. [The beneficiary] will also assist us in devising business plans, setting financial organizational goals, and evaluating the financial viability of any proposed venture.

The petitioner offers a more exhaustive listing of job duties on appeal:

- Preparation of financial reports;
- Coordination of company disbursements;
- Establishment of accounting policies and procedures;
- Preparation of budget and budgetary recommendations;
- Monitoring, verification[,] and reconciliation of expenditure of budgeted funds;
- Study and analysis of financial health;
- Study and analysis of the financial records of a company to determine whether merging with it is in the company's best interest;
- Study and analysis of balance sheets;
- Study and analysis of future earnings and earnings potential;
- Study and analysis of expenses, including recommendations as to how company can reduce expenses;
- Determination of fiscal requirements;
- Preparation of reports and analysis, including financial statements and tax reports, setting forth progress, adverse trends and appropriate recommendations or conclusions;
- Accurate and timely preparation of weekly payrolls, [and] making proper federal and state deposits into respective accounts;
- Maintenance of all company operating, payroll, savings[,] and investment banking accounts, including disbursements and balancing;
- Monitoring of daily cash balances in operating savings and investment banking accounts to cover obligations and to maximize interest earnings;

- Generation of monthly recaps for workers' compensation and general liability insurance premiums;
- Maintenance of employee personnel files including all tax forms, insurance records, and 401K records;
- Preparation of required reports to all State and Federal regulatory offices;
- Analysis of costs to respond to future community demands for residential care;
- Coordination of property and financial systems;
- Defining and analysis of annual revenues, employment and expenditures; and
- Review of all governmental regulations pertaining to MediCal and Medicare reimbursement and compliance.

On appeal, counsel states the following with regard to the proposed duties of the petitioner:

Given the accounting issues involved in running a healthcare-related business, such as payroll, preparation of financial reports, fiscal management, review and payment of miscellaneous business fees and tax filings, insurance billings, bookkeeping, employee benefits, budget preparation, etc., combined with the complexity of maintaining fiscal compliance with MediCal, MediCare, Title 2 of the Social Security Administration [sic], it is the petitioner's opinion that she needs the services of an internal accountant, and based thereupon wishes to employ [the beneficiary].

The AAO agrees with counsel that, as a general matter, accountant positions normally qualify for classification as specialty occupations. However, the AAO disagrees with counsel's assertion that the position proposed here is that of an accountant.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors. Counsel cites to a portion of the *Handbook* relating to internal auditors in support of his assertion that the proposed position is that of an accountant. The *Handbook* sets forth the following description of the duties of an internal auditor:

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. There are many types of highly specialized auditors, such as electronic data-processing, environmental, engineering, legal, insurance premium, bank, and healthcare auditors. As computer systems

make information timelier, internal auditors help managers to base their decisions on actual data, rather than personal observation. Internal auditors also may recommend controls for their organization's computer system to ensure the reliability of the system and the integrity of the data.

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. These workers post transactions in journals and on computer files and update the files when needed

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

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases The widespread use of computers . . . has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing.

According to the *Handbook*, 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* does indicate that many individuals with four-year degrees accept bookkeeping and accounting clerk positions in order to enter the field or a particular company with the goal of being promoted

to professional or managerial positions. The *Handbook* also indicates that many graduates of junior colleges and business and correspondence schools can obtain junior accounting positions.

As discussed 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.¹

The *Handbook* describes the occupation of a tax preparer as follows:

Prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant.

The *Handbook* indicates that the normal educational requirement for a tax preparer is "moderate-term on-the-job training."

A petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position or an 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 the minimum for entry into the occupation as required by the Act.² To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record in this case does not support the assertion that the duties of the proposed position require a bachelor's degree in accounting or a related specialty. While this 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. The scope of the proposed position lacks both the breadth and the depth of an accounting position.

¹ According to the website of Skyline College (<http://www.skylinecollege.net>), a community college located in San Mateo, California, an associate's degree in business or accounting would involve learning the fundamentals of financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the 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 accounting techniques that would serve the needs of management and facilitate decision-making.

² The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

As noted previously, the petitioner is a specialty care organization with three employees and a gross annual income of approximately \$230,400. 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 have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with an annual income of \$230,400 differ considerably from the responsibilities associated with an annual income in the millions, or tens of millions, as well as from the responsibilities of performing accounting work for multiple clients. The record does not support a finding that the petitioner will employ the beneficiary in an accounting position.

Rather, the AAO concludes that the proposed position describes the duties of an experienced bookkeeping, accounting, or auditing clerk and a tax preparer. Many of the duties – such as preparing the payroll, preparing financial reports, paying business fees, handling insurance billings, bookkeeping, handling employee benefits, and maintenance of personnel files – 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, or auditing clerk positions, though employers often require a two-year associate's degree in business or accounting. Tax preparers prepare tax returns, and they are not required to possess degrees, either. Considering the nature of the petitioner's business, the scale of its operations, and the duties of the proposed position, the AAO concludes that the position actually combines the duties of a bookkeeping, accounting, or auditing clerk and a tax preparer. Since these positions do not require a baccalaureate degree in accounting or a related specialty, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been presented to support the contention that the proposed position qualifies for classification as a specialty occupation under this prong.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate degree or higher as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

Although counsel stated in the RFE response that these were “[j]ob [a]dvertisements for the [p]osition by [s]imilar [o]rganizations,” no evidence has been submitted to establish that any of these postings are from organizations similar in size or scope of operations to the petitioner, a specialty care organization with three employees. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For example, no information was submitted regarding Assured Horizons, LLC, Cachuela ICF/DDN Horpes, Inc., or Jewel Bells Co., Inc., and WLA is a hospitality design firm. Of the unnamed companies, one is a property management company and another regional shopping center. Seven of the postings provide neither the name of the company nor the type of business in which they engage. There is no evidence to suggest that any of these organizations are similar to the petitioner.

Moreover, as noted previously, the AAO does not accept counsel's contention that the proposed position is that of an accountant

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as the duties of the proposed position are similar to those of bookkeepers, auditing clerks, accounting clerks, and tax preparers, which do not require a four-year degree.

Therefore, counsel has not established that its proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion.

In order to establish eligibility under this criterion, a petitioner must demonstrate that it normally hires individuals with a bachelor's degree or its equivalent for the position. Evidence to support the assertion that the petitioner normally requires a degree or its equivalent must be presented. If a petitioner has never before filled the position, then it cannot qualify under this criterion. Although counsel asserts on appeal that the proposed position qualifies under this criterion, no evidence to support this assertion, other than a statement by the petitioner that it requires a bachelors' degree, has been presented. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

After a review of the evidence in the record, it appears to the AAO that the petitioner has never before filled this position, which would preclude approval under this criterion.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the AAO is not persuaded by the evidence of record, including the nature and scale of the petitioner's business operations, that the duties of the position exceed the occupational scope of an experienced bookkeeper, auditing clerk, accounting clerk, or tax preparer, positions which do not require specialized knowledge at a baccalaureate level. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the director was correct to deny the petition on this ground.

Beyond the decision of the director, the AAO finds that the beneficiary is not qualified to perform the duties of a specialty occupation. The record indicates that the beneficiary graduated from the Central Luzon Technical School with a Bachelor of Science in Commerce in April, 1970. There is no educational equivalency of record establishing that this degree is the equivalent of a United States degree from an accredited institution as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As the beneficiary is not shown to have a U.S. degree in a specialty, she is not qualified to perform the services of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation, nor has the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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.