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FILE: WAC 04 130 51151 Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

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 distributes computers, computer parts, and accessories by E-commerce, and a provides associated technical services. It seeks to employ the beneficiary as finance manager and to classify her 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 is 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.

The petitioner describes itself as an E-commerce business engaged in the sale and distribution of computers and associated products, and the provision of technical services. The business was established in 2001, had gross income of approximately \$750,000 in 2002 and over \$3.5 million in 2003 (according to its federal income tax returns), and had ten employees at the time the instant petition was filed in 2004. The company's product lines include desktop computer systems, portable computers, customized computer system building and integration, and computer devices such as CD burners, media cards, memory boards, power supplies, and other accessories. The petitioner states that it is seeking to hire the beneficiary as a finance manager to perform the following duties:

- Manage the company's financial affairs; set up new and maintain existing business accounts; review accounting information including accounts receivable and payable, maintain general and separate ledgers. Audit sales, purchase and inventory.
- Analyze the company's financial information and prepare accounting and monthly and quarterly financial reports for operation costs, expenditures, human resources. Audit business contracts and sales records.
- Prepare payrolls, wage tax reports, sales tax filings with government tax agencies including California Employment Development Department, Franchise Tax Board, and Internal Revenue Service.
- Compile the company's financial statements and balance sheets detailing assets, liability, profit and loss, summarize current financial position. Participate in the company's financial planning, project budget preparation.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in finance, accounting, or business administration. The beneficiary received a bachelor of arts in business administration, with a concentration in finance, from California State University in Fullerton on June 6, 2003. The petitioner's organizational chart shows the finance manager as subordinate to the president, and superior to two employees – identified as a bookkeeper and an accounting/billing clerk.

In his decision the director referred to the information on financial managers in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. After noting the *Handbook's* general statement that financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies, the director quoted at length the *Handbook's* description of the work financial managers perform and found that the evidence of record failed to establish that the petitioner's business has the financial or organizational scope and complexity to credibly offer a position of financial manager. In the director's view, the evidence was insufficient to show that the proffered position could not be performed by an experienced individual with less than a baccalaureate level of education. The director concluded that the position did not meet any of the criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that financial managers are not limited to large companies. Counsel contends that the petitioner's volume of business and steady growth necessitates the services of a financial manager, and that the duties of the position – which include managing the company's sales, marketing, accounting and purchasing activities and require knowledge of accounting, tax filings, financial planning, and budgeting – can only be performed by a financial manager.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, 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.

The AAO agrees with the director that the record does not demonstrate that the petitioner's business is of such a scale and complexity that the beneficiary would be performing the services of a financial manager. While the proffered position may include some duties that involve financial management 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 a specific job-related specialty. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty. 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 duties of the proffered position, as described by the petitioner, accord closely with the *Handbook's* entry for bookkeeping, accounting, and auditing clerks. That occupation is described as follows in the *Handbook*, 2004-05 edition, at 437-38:

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.

. . . Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing.

Most of the duties of the proffered position are included in the foregoing description of bookkeeping, accounting and auditing clerks. As previously noted, the petitioner's organizational chart identifies two other employees, subordinate to the proffered position, with job titles of bookkeeper and accounting/billing clerk. In a brief description of their job duties, the petitioner states that the bookkeeper is responsible for setting up accounts, entering and maintaining accounting ledgers, and closing the monthly accounting records, while the accounting/billing clerk is responsible for preparing payments, preparing and sending bills and invoices, and depositing checks. The duties of these two employees are largely incorporated in the duties of the proffered position. It would appear that the proffered position involves some oversight of the bookkeeper and accounting/billing clerk, but that responsibility does not enhance the position to one of a financial manager. Based on the duties of the proffered position, the AAO concludes that it is a combination bookkeeping, accounting, and auditing clerk position, as described in the *Handbook*.

With respect to the educational requirements of the occupation, the *Handbook* states that a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing 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, accounting, and auditing clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* at 434. Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping, accounting, or auditing clerk position. The proffered position, therefore, 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 degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. 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. Thus, 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 qualify as a specialty occupation under the fourth alternative criterion, 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. Based on the documentation of record, the AAO is not persuaded that the duties of the position could not be performed by an experienced bookkeeping, accounting, and auditing clerk with less than a baccalaureate level of knowledge.

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.