

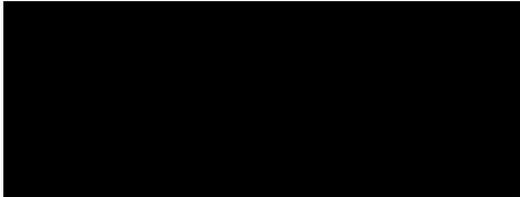


U.S. Citizenship
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Services

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FILE: WAC 02 263 53237 Office: CALIFORNIA SERVICE CENTER Date: NOV 15 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:

SELF-REPRESENTED

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 provides home health care. It 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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 petitioner's 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 organizing and maintaining accounts with suppliers and residents; preparing quarterly and yearly tax information, payroll statements and deductions, and monthly profit and loss reports and financial statements; directing the implementation of a general accounting system for accounts and keeping record of disbursements, expenses, tax payments, and general ledgers; applying principles of accounting to analyze financial information and preparing financial reports; analyzing financial information detailing assets, liabilities, and capital; performing audits; preparing reports; and providing tax planning advice. For the proposed position the petitioner requires a bachelor's degree in accounting or a related field.

The director stated that some of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the petitioning entity's nature are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's degree in a related area does not guarantee a position is a specialty occupation. According to the director, the petitioner does not have the organizational complexity to require the services of an accountant: it has no bookkeeping, accounting, or auditing clerks, and it already employs one full-time accountant. The director found inconsistencies in the evidence in that the proposed position is titled "accountant," but the duties include basic bookkeeping functions. The director referenced *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which discusses evidentiary inconsistencies. According to the director, the record reflects that the petitioner's current and proposed accountant positions may actually be bookkeeping positions, and he stated that the *Handbook* conveys that bookkeeping and accounting clerks do not require a bachelor's degree. The director stated that incidental specialty occupation duties such as financial analysis, planning, budgeting, and cost accounting do not establish a position as a specialty occupation. There is no reasonable expectation, the director stated, that the beneficiary would primarily serve as an accountant or auditor in the review, analysis, and reporting of accounting records.

On appeal, counsel narrates the proposed duties, asserting that they are highly specialized and complex, requiring a baccalaureate degree in accounting. Referring to the submitted organizational chart, counsel states that it shows that the beneficiary will supervise an accounting clerk and bookkeeper, but will not perform their duties. Counsel emphasizes that the petitioner requires an additional full-time accountant due to rapid growth, a desire to expand, and the cost effectiveness of an in-house accountant. A standard requirement for medical service providers is to employ an in-house accountant with a bachelor's degree, counsel asserts, and to substantiate this references three letters and job postings. Counsel discusses the *Handbook's* description of an accountant and bookkeeper/accounting clerks.

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 proposed 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 often turns to the *Handbook* for information about the nature and educational requirements of occupations.

The *Handbook* reveals that the proposed position differs from an accountant. The *Handbook* reports that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. Of these fields, the AAO finds that the closest category to the proposed position is the management accountant. The *Handbook* relays:

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.

The duties described in the *Handbook* do not apply to the proposed 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 is not part of a management team and will not prepare financial reports for the described nonmanagement groups; nor will the beneficiary provide budgeting, performance evaluation, and cost and asset management. In light of the disparity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities differ from those of an accountant.

Consequently, a bachelor's degree in accounting or a related field – which the DOL states is necessary for a management accountant – would not be required for the proposed position. Furthermore, 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 \$722,579¹, which the petitioner generated in 2002, differs vastly from responsibility associated with a far larger income.

The AAO finds that the proposed position is more akin to a junior accounting position, which the *Handbook* reports is an occupation that does not require a baccalaureate degree in accounting. The *Handbook* conveys that graduates of junior colleges² and business correspondence schools qualify for junior accounting positions:

Many graduates of junior colleges and business and correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

For the reasons discussed above, the evidence in the record is insufficient to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits letters and job postings to satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Considered collectively, this evidence is not persuasive, however. The companies in the postings are either dissimilar in nature from the petitioner, a provider of home health care, or their nature is not disclosed. KNF&T Staffing Resources is a staffing agency; Holy Name Hospital is a hospital; Episcopal Long Term Care is a nursing home with \$30 million in revenue; DaVita provides dialysis; Professional Placement Associates, Inc. seeks an accountant for a nursing home; and Somerset Medical Center is a medical center. The company Adults and Children with Learning and Developmental Disabilities, Inc. has a different educational requirement from the petitioner as it requires only an associate's degree. The submitted job postings, therefore, fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

¹ The AAO observes that the Form I-129 petition indicates that the petitioner generated a gross annual income of \$1 million.

² The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that 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 generally accepted accounting principles (GAAP), forecasting, budgeting, cost accounting, break even analysis, and developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

The AAO now considers the submitted letters from Pacific Health Care Enterprises, Inc., a provider of temporary nursing services; Keiro Senior Healthcare, a 98-bed skilled nursing facility; and Vista Psychological Center, Inc., a provider of services to children with developmental disabilities and autism. The three companies require a baccalaureate degree in a related field for a position in finance/accounting; however, only Pacific Health Care Enterprises, Inc. is similar in nature to the petitioner. In light of this, one company's educational requirement fails to establish an industry-wide standard of a baccalaureate degree in accounting.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed earlier, the proposed duties correspond to those of a junior accountant; and although the evidence indicates that the proposed duties require some knowledge and application of accounting principles, in the context of the income generated by the petitioner (\$722,579 in 2002) and the submitted evidence of accounts payable and accounts receivable; DE-6, W-2, and 1099 Forms; bank statements; a list of suppliers; and contracts entered into with independent contractors, the record does not establish the proposed duties as so complex or unique as to require a baccalaureate degree in accounting or a related field. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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 them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed that the proposed duties correspond to those of a junior accountant, which is an occupation that does not require a bachelor's degree in accounting. Even though the evidence indicates that the proposed position requires some knowledge and application of accounting principles, it does not establish duties that are so specialized and complex as to require a baccalaureate degree in accounting or a related field. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.