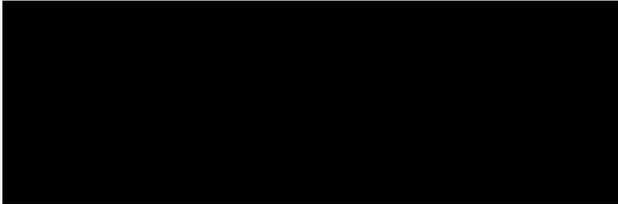


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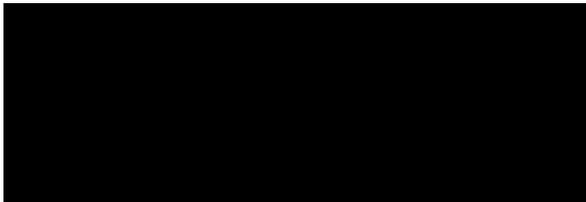
FILE: EAC 03 128 50350 Office: VERMONT SERVICE CENTER Date: NOV 29 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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 limousine company that seeks to employ the beneficiary as a full-time accountant. The petitioner 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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 a full-time accountant. The petitioner indicated in its letter of support of the initial petition that it requires the beneficiary to possess a bachelor's degree in

accounting, finance or a related degree and at least two years experience, or alternatively a strong and lengthy professional experience.

The petitioner conceded that the beneficiary did not have a baccalaureate degree and contended that the beneficiary had 22 years experience in the field of accounting. The petitioner submitted a chronological work history. Additionally, the petitioner submitted three work experience letters from the beneficiary's prior employers with translations and a copy of the beneficiary's resume. The director found that the nature of the proposed duties did not appear to involve such specialization or complexity as to require the knowledge associated with the attainment of a baccalaureate degree and requested additional evidence to establish that the proffered position was a specialty occupation. Additionally, the director requested evidence to establish that the beneficiary was qualified for the specialty occupation.

In response, counsel for the petitioner restated the duties performed by the beneficiary at her previous places of employment. Counsel resubmitted the letters of employment from the beneficiary's prior employers. The director found that there was no evidence that the beneficiary holds a baccalaureate degree in any field. The director noted that there was no formal credentials evaluation to support the beneficiary's 22 years of relevant experience. The director concluded that the evidence submitted to establish the credentials of the beneficiary were not persuasive in demonstrating that the beneficiary has the equivalent of a baccalaureate degree in accounting. The AAO notes that the director incorrectly indicated the subject matter as computer science.

On appeal, counsel contends that the beneficiary is qualified to perform the services of a specialty occupation based on her more than 22 years of relevant work experience. Counsel asserts that "although the record does not show any independent evaluation of the beneficiary's experience, the statements from the beneficiary's employers combined with 22 years of relevant experience in the specialty lead to a reasonable conclusion that the beneficiary qualifies to perform the duties of the offered position."

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) requires that accountants have a degree in accounting or a related discipline. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform in an occupation that requires a bachelor's degree in accounting or a related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The director found the letters of employment insufficient to establish that the beneficiary has the equivalent of a degree in accounting.

The petitioner submitted three letters from the beneficiary's prior employers. The first letter is from Idan, Inc. which indicated that the beneficiary worked there from 1986 to 1991 as a senior accountant. The second letter is from Donna Cay, which indicated that the beneficiary worked as the senior independent, and sole accountant for the company from June 30, 1991 until June 30th 2000. The final letter indicated that the beneficiary worked for the "Bathei Teva" agencies of Sathe Inc. The letter described the beneficiary's duties as: computation of payroll for the companies 28 employees; reposting to the tax administration (social security, revenue tax, VAT), bookkeeping, loans, reconciliations, supplier expenses, customer payments, preparing closing of books for the balance sheet, loss/profit statements. Two of the letters do not discuss the beneficiary's specific duties. None of the letters describe how the positions were progressively responsible. These letters are insufficient to establish that the beneficiary has the equivalent of a bachelor's degree based on education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and that she has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. Counsel described the beneficiary's work experience with more detail than the employment experience letters. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and has not established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the specialty occupation. The petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the proffered position does not qualify as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 nor 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.

The petitioner states that it is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; a February 25, 2003 letter of support from the petitioner; and counsel's June 3, 2003 response to the director's request for evidence. At the time of filing, the petitioner stated that the beneficiary would perform duties that entail controlling all aspects of the petitioner's expenses; reporting to management on important financial matters; analyzing financial information and preparing financial reports to determine or maintain record of assets, liabilities, profit and loss and tax liability;

examining, analyzing, and interpreting accounting records for the purpose of giving advice or preparing statements; advising on systems of recording costs and other financial and budgetary data; maintaining and reconciling account payables and account receivables; in charge of corporate accounts billing; controlling the fiscal activities of the petitioner; administering the relationship with the tax administration; and overseeing drivers' account billing. The petitioner indicated that it requires that the beneficiary possess a bachelor's degree in accounting, finance or a related degree and at least two years experience, or alternatively a strong and lengthy professional experience.

The director requested additional information about the proffered position, and noted that the nature of the proposed duties do not appear to involve such specialization or complexity as to require the knowledge associated with the attainment of a baccalaureate degree. The director specifically requested a detailed description of the work done.

In response to the director's request for evidence, counsel explained that the petitioner is seeking the beneficiary's services to review and adjust the following aspects of the petitioner's business income, expenses, accounts receivable and payables, cash management, payroll, accounting analysis and reports, and financial statements. Additionally, counsel explained that the petitioner has hired the services of an outside accountant/auditor. Counsel states that the petitioner has decided to hire an employee to perform functions equivalent to the one performed by the external auditor and accountant, as it needs the work to be performed internally and professionally. The petitioner submitted evidence of the outside accountant.

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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of 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, 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.

While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

The *Handbook* 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 petitioner indicated that it had 55 employees and grossed \$400,000 annual income on the Form I-129. The petitioner submitted a tax return. The petitioner submitted a Form 1120 for tax year 2001 indicating gross receipts or sales of \$2,337,479. The petitioner's level of income, volume of business, and number of employees have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The petitioner has not provided evidence that supports its contention that due to the size and complexity of its business the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation.

The *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. 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 duties would include maintaining and reconciling account payables and account receivables; and in charge of corporate accounts billing.

As shown 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* also states that many graduates of junior colleges and business and correspondence schools, as well as some bookkeepers and accounting clerks, obtain positions as junior accountants.

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits various internet postings for the position of accountant or assistant controller from various companies. One deficiency in the postings is that the companies are obviously dissimilar to the petitioner or their nature is unknown. For example CPI Recruiters indicates that the accounting position is with a manufacturing firm; an internet posting from jobs.com indicates that another posting is with a food service manufacturer. Additionally, the duties of the proffered position are not for those of an accountant, as discussed above. No evidence in the record establishes the

¹ 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, the 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 the GAAP and accounting techniques which serve the needs of management and facilitate decision-making.

regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner 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. As already discussed above, 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.

Nor is there evidence in the record to establish 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. Although the petitioner submitted evidence that it has retained the services of an outside accountant, this is insufficient to establish that it normally requires a degree for this position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. As discussed above, bookkeepers manage financial record keeping.

Upon review of the record, the petitioner has not documented the duties of the proffered position in relation to the nature of its business and many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore 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. For this additional reason the petition may not be approved. 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.