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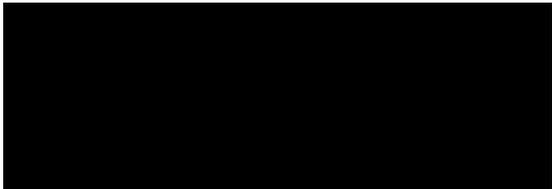
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U.S. Citizenship  
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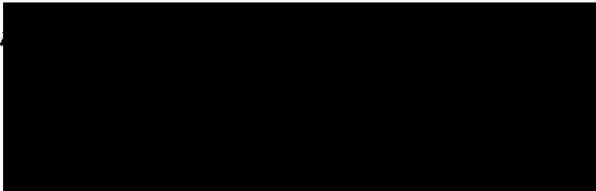


FILE: WAC 03 042 52142 Office: CALIFORNIA SERVICE CENTER Date: 05/08/08

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, 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 is a wholesale apparel business. It seeks to employ the beneficiary as an accountant and to continue her classification 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.

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 the petitioner described itself as an apparel wholesaler with twelve employees and gross annual income of \$800,000. The petitioner stated that it proposed to employ the beneficiary as a full-time accountant for three years, and described the duties of the position as follows:

- Apply principles of accounting to analyze and examine financial information and prepare company's financial reports.
- Analyze financial information, detailing assets, liabilities, and capital.
- Prepare entries to general ledger to document business transactions.
- Using computer, prepare financial reports and documents such as balance sheets, profit and loss statements (on quarterly and yearly basis), funds flow and cash flow statements to summarize current and projected company financial position.
- Examine financial documents for accuracy and verify them with books of entries.
- Draw financial balances and make reports of account status.
- Monitor accounts receivable and payable, coordinate bookkeeping activities, and do bank reconciliation.
- Audit contracts and orders and prepare reports to substantiate each transaction prior to settlement.
- Interpret accounts and financial records to management.
- Perform job duties using computerized accounting system.

In a letter accompanying Form I-129 the petitioner indicated that the position also involves the preparation of quarterly and yearly tax records, payroll statements and deductions. The beneficiary is qualified for the job, the petitioner stated, by virtue of her bachelor's degree in business administration, with a major in accounting, from Baliuag University in the Philippines, granted in March 1991, and twelve years of work experience in accounting, finance, and auditing.

In its response to the RFE the petitioner submitted an excerpt from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* on accountants and auditors, a series of internet job announcements for accountant positions, excerpts from the petitioner's own internet website, the petitioner's quarterly wage and withholding reports for the last quarter of 2003, a list of employees and their job titles, the beneficiary's official transcripts from Baliuag University, and other documentation.

In his decision the director indicated that while some of the proffered position's duties involved accounting functions, others could be performed by accounting clerks and bookkeepers – occupations which do not normally require a specific degree as a minimum for entry into a position. The director cited confusing documentation in the record as to who performed accounting functions. While an internet printout of the petitioner's organization lists two individuals on the accounting team, including the

beneficiary in a subordinate position, a separate list of the petitioner's eleven employees identifies that other individual – Amir Cherchian – as the office manager. The evidence of record was not persuasive, the director concluded, that the proffered position could not be performed by an experienced individual with a sub-baccalaureate level of education. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel reiterates the petitioner's contention that the duties of the proffered position are those of an accountant, even if some incidental duties could be performed by a bookkeeper. Explaining the relationship of the two individuals listed on the accounting team, counsel states that Amir Cherchian has a dual role as officer manager and accountant, while the beneficiary was hired as a second accountant who can also perform some bookkeeping functions, as needed. Counsel asserts that the beneficiary's primary responsibilities include analyzing and examining financial information, recording the company's assets, liabilities and capital, preparing documents such as balance sheets, profit and loss statements, and funds and cash flow statements, and reporting to management on the company's current and projected financial position. These duties reflect the responsibilities of an accountant, counsel contends, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The majority of the beneficiary's time will be spent on tasks involving the sophisticated analysis of financial information and the preparation of reports for management enabling it to make sound business decisions, counsel states, which are tasks requiring the specialized knowledge of an accountant. A bookkeeper performs primarily clerical duties, counsel contends, and does not have the expertise to analyze and interpret financial information for management. While acknowledging that some of the beneficiary's duties involve clerical tasks, counsel reiterates that the analytical tasks inherent in the position require the services of an accountant.

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 Inc. v. Reno, 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 require at least a bachelor's degree in accounting or a related field, as indicated in the *Handbook*, *id.*, at 70. The *Handbook* goes on to say, however, that some junior accounting positions require less than a baccalaureate degree:

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.

*Id.* at 71. Thus, although most accounting positions require a baccalaureate degree in accounting or a related specialty, it is possible to enter lower-rung positions in the occupational field with a sub-baccalaureate educational background and/or experience as a bookkeeper or accounting clerk.

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 . . . .

. . . . *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. Those with several years of accounting or bookkeeper certification will have the best job prospects [emphasis added].*

*Handbook, id.*, at 437-38. 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.* The *Handbook* also indicates that for tax preparers the most significant source of education is on-the-job training. *Id.* at 649.

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 performance demands of the position are consistent with 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 the field of accounting or a related specialty field. The proffered position lacks important attributes of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare financial reports for nonmanagement groups like stockholders, creditors, regulatory agencies, and tax authorities. These functions are not reflected in the petitioner's description of the proffered position's duties, except for the reference to the "preparation" of quarterly and yearly tax records which does not detail the level and sophistication of the beneficiary's input in the preparation of those documents. Thus, the scope of the proffered position appears to lack both the breadth and the depth of a management accounting position.

As previously noted, the petitioner states that it has twelve employees (eleven employees are identified in the documentation of record) and gross annual income of \$800,000. While the size of a company does not, in and of itself, determine its need for an accountant, the petitioner's 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 a gross annual income of \$800,000 differ greatly from the responsibilities associated with a gross annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients. The petitioner is a wholesale apparel business. There is no documentation in the record of the volume of business

transactions conducted by the company, or the scope of the financial information to be analyzed for management detailing assets, liabilities, and capital. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)). The AAO notes that an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping, accounting, and auditing clerks.<sup>1</sup>

Considering the duties of the proffered position, the nature and scale of the petitioner's business operations, and the fact that the petitioner has another accountant in its employ superior to the beneficiary on the organizational chart, the AAO concludes that the position is a combination bookkeeping, accounting, and auditing clerk, as described in the *Handbook*. Many of the job duties – including the preparation of financial statements and reports for management, the compilation of financial information for entry into accounts, the documentation of business transactions, the preparation of balance sheets and profit and loss statements, and the monitoring of accounts receivable and payable – 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, producing financial statements, preparing reports for supervisors and management, verifying and balancing receipts, and keeping track of overdue accounts. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, and auditing clerk positions, though employers often require a two-year associate's degree in business or accounting. The AAO concludes, therefore, 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).

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the record includes four internet job announcements for accountant positions as evidence that a baccalaureate degree is the common industry-wide requirement for entry into the occupation. Only two of the four advertising companies are in the same line of business as the petitioner, however, and at least two of the companies are much larger than the petitioner in their scale of operations. In addition, one of the advertisements indicates only that a baccalaureate degree is required, without indicating a specialty field, while another states that a bachelor's degree in accounting or finance is “preferred,” without specifying that it is a requirement for the position. Furthermore, the AAO has determined that the proffered position is not that of an accountant, but rather a combination bookkeeping, accounting, and auditing clerk. For the reasons discussed above, the internet job postings are not persuasive evidence that a bachelor's degree in accounting or a related specialty is a common requirement in the petitioner's 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).

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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, 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.

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 for the position 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 – “The employer normally requires a degree or its equivalent for the position” – the record indicates that the petitioner previously hired the beneficiary for the proffered position under H-1B status that was valid from April 7, 2000 until December 17, 2002. The petitioner states that the beneficiary's qualifications, which include a bachelor's degree in business administration with a major in accounting from a Philippine university and twelve years of work experience in accounting, finance, and auditing, were required because of the demanding nature of the job's accounting duties. However, there is no evidence that the petitioner required its other employee performing accounting duties – Amir Charchian – to have a baccalaureate degree in accounting or a related specialty, even though he is listed on the organizational chart as superior to the beneficiary. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Soffici, supra.* Based on the evidence of record, the AAO determines that the proffered position does not meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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, accounting, and auditing clerk, which does 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.