

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

*D 2*

[Redacted]

FILE: WAC 03 118 53515 Office: CALIFORNIA SERVICE CENTER Date: **OCT 04 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:

[Redacted]

**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 is a garment manufacturing company. In order to employ the beneficiary as an 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation.

On appeal, counsel contends that the evidence of record establishes that the petitioner is proffering an accountant specialty-occupation position.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's May 24, 2004 letter to the AAO that constitutes the appellate brief.

The AAO notes that the director employed several erroneous propositions in his analysis. These include statements to the effect that a petitioner for a private sector accounting position must establish that the position is being offered within a limited range of businesses; that inclusion of bookkeeping or clerical tasks among the duties of a proffered position precludes it from recognition as an accounting position; and that accountant positions only occur in organizations with "an accounting staff to maintain accounting records" for the accountant's use. Nevertheless, the evidence of record supports the director's ultimate conclusion that the petitioner has not satisfied any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the appeal shall be dismissed.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

On appeal the petitioner asserts that the following duties presented earlier in the record establish that the proffered position is a specialty occupation:

- (1) analyzing and compiling financial information to prepare entries to accounts, such as general ledger accounts;

- (2) documenting business transactions;
- (3) preparing balance sheets, profit and loss statements and other reports to summarize the current and projected company financial position;
- (4) consolidating accounting data for preparation of financial statements;
- (5) completing general ledger postings and assisting with monthly closings;
- (6) preparing monthly financial statements and related reports for management;
- (7) reconciling balance sheet accounts on a periodic basis;
- (8) reviewing and analyzing profit and loss statements;
- (9) preparing variance analysis and cash flow analysis;
- (10) preparing reports required by governmental and regulatory agencies;
- (11) assisting with preparation of annual audits;
- (12) undertaking annual budgeting and forecasting process;
- (13) undertaking special projects with the Controller;
- (14) establishing, modifying, and documenting implementation of accounting control procedures;
- (15) analyzing past and present financial operation, trends and costs, estimated and realized revenues to prepare budget and project future revenues and expenses;
- (16) interpreting budgets to management as well as advising management on matters such as effective use of resources and assumptions underlying budget forecasts;
- (17) auditing contracts, orders, vouchers, and preparing reports to substantiate individual transactions;
- (18) preparing tax returns, examining accounts and records and computing taxes according to prescribed rates, laws, and regulations; [and]
- (19) ensuring that the company complies with periodic tax payment, information reporting, and other taxing authority requirements.

The petitioner reiterates that the beneficiary would also be tasked to perform the following duties, which the petitioner describes as “specific management accounting duties”: “performance evaluation,” “cost management,” “asset management,” and “strategic planning or new product development.”

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor’s degree, or its equivalent, in accounting or a related specialty.

The AAO finds that the petitioner has established that the proffered position is one which normally requires the application of some knowledge of accounting principles, but *not* that the requisite knowledge is that attained by at least a bachelor’s degree, or its equivalent, in accounting or a related specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on accounting duties as presented in the 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438). The totality of information in these sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor’s degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accountants. This statement (*Handbook*, at 428) illustrates the fact that not all accounting functions require a person with a bachelor’s degree in accounting or a related specialty:

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.

The AAO finds that the petitioner presents the position and its duties in exclusively generalized and abstract terms that do not establish that 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 required by the Act and the relevant regulations.

The petitioner states, at page 1 of its March 10, 2004 letter of reply to the RFE, that it is the largest garment manufacturer in the United States, employs over 1,000 employees, and has 12 authorized distributors nationwide as well as foreign offices in Canada, the United Kingdom, and Germany. This statement and the above listing of duties occur in an evidentiary context without substantive information about the petitioner’s business operations; the petitioner’s business plans; the financial information that the beneficiary would analyze; the accounting data that the beneficiary would consolidate; the financial statements and reports that the beneficiary would prepare; the assistance role that the beneficiary would have in audits; the budget with which he would be involved; the matters that he would forecast; the special projects in which he would

participate; his role in those projects; the accounting control procedures which he would modify, establish, and document; the financial operations, trends, costs, and revenues that he would analyze; the auditing tools that he would apply; the tax matters with which he would be engaged; the nature of the performance to be evaluated; the ranges of costs and assets that he would manage; the nature of that management; the strategic planning that would engage the beneficiary; his role in new-product development; or any specific accounting matters that would engage the beneficiary. The petitioner states on the Form I-129 that it employs 100 people and has a gross annual income of \$17 million, with a net annual income of \$1.07 million. There are no financial records documenting these statements of the petitioner. The petitioner states that it has 12 authorized distributors and is one of the fastest growing consumer apparel brands in the United States. No evidence of record documents these statements. 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)). The petitioner's listing of abstract duties does not establish the proffered position as one that requires at least a bachelor's degree, or its equivalent, in accounting or any other specialty.

The AAO also notes discrepancies in the information presented by the petitioner about its organizational structure and about its hiring practices. The letter on appeal (at page 4) states that the petitioner "has an organizational structure that includes a Finance Department composed of a Chief Financial Officer, Controller, Manager, Accountants, and Bookkeepers." The petitioner's organizational chart, however, identifies no bookkeepers and no accountants other than the beneficiary. Furthermore, while stating that the petitioner prides itself on "its hiring policies and past hiring practices of requiring a baccalaureate degree or higher for management positions similar to Accountants," the petitioner's response to the RFE section on accountant hiring practices does not mention accountants at all. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any submissions from firms, individuals, or a professional association attesting to routine recruitment and hiring practices regarding the proffered position. Further, the AAO notes that the lack of concrete information about the duties associated with this petition would not provide a reasonable basis for such an opinion.

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). The petitioner lists more than twenty duties, but as earlier noted, the petitioner's information about them is generalized and abstract. It does not identify specific tasks, and it does not illuminate the level of accounting knowledge that the petitioner would apply. Consequently, in this case the nature and number of the proposed duties are not indicative that the position needs or that performance of its duties are normally associated with a baccalaureate or higher degree in accounting or a related specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) by establishing a history of hiring for the proffered position only persons with at least a bachelor's degree in accounting or a related degree. The petitioner provides no documentary evidence for its assertions on this issue. 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)). 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). Furthermore, as earlier discussed, the credibility of the beneficiary's information about its hiring procedures is suspect.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The petition is denied.