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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 092 52447 Office: CALIFORNIA SERVICE CENTER Date: 001 04 2015

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in cursive.

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 in the business of dip dyeing, screen printing, and tie dyeing shirts, pants, garments, and fabrics. It seeks to employ the beneficiary as an accountant 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 failed to 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 and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter, filed in February 2004, the petitioner indicated that its business was established in August 2003, had fifteen employees, and projected gross annual revenues of \$1.2 million for 2004. The petitioner stated that it proposed to hire the beneficiary as a part-time accountant (10-20 hours/week) to perform accounting, tax, attestation, and consultation services. According to the petitioner, 60% of the beneficiary's time would be spent on accounting services – a three-part activity consisting of preparing cash flow projections, financial statement analysis and the preparation of profit and loss statements and balance sheets, and the development of a computerized accounting software system. 5% of the beneficiary's time would be spent on tax services, which includes monitoring and advising on federal and state tax policies and participating in any federal or state audits. 25% of the beneficiary's time would be spent on attestation (auditing) services, which includes conducting all financial, compliance, and operational audits, as needed. 10% of the beneficiary's time would be spent on consultation services, which includes setting up a quality control system and implementing it in accordance with Generally Accepted Accounting Principles (GAAP).

The petitioner stated that the beneficiary was qualified for the position by virtue of her academic degrees – including a bachelor of science in commerce, with a major in accounting, from the Philippine College of Commerce, granted in May 1977, and a master of government management from the University of the City of Manila, granted in January 1997 – as well as 25 years of experience in the accounting field.

In its response to the RFE, filed in May 2004, the petitioner submitted opinion letters from a certified public accountant (CPA) and a university professor, each of whom asserted that the duties of the proffered position required the services of an accountant with a bachelor's degree in accounting, business administration, or finance. Also submitted with the RFE were the petitioner's quarterly wage and withholding reports and a quarter end statement from its first two quarters of operation, an organizational chart and roster of employees, assorted literature about the occupation of accounting, a series of internet job announcements for accountant positions, and the petitioner's own internet posting for the proffered position. The job description in the petitioner's internet posting reads as follows:

Prepares financial statements and conducts analysis for submission to management. Ascertain the proper amounts of the company's assets (account receivables, fixed assets, cash, etc.) and liabilities. Updates and advises management on potential accounting/tax ramifications. Renders budgetary and cash flow projections. Performs all internal control procedures within the company in order to verify the accuracy of figures being reported. Enters all findings onto computer incorporating accounting software for summarization of financial records for managerial review.

In his decision the director stated that the proffered position could not be classified as an accountant for two reasons. The first was that the petitioner's business, as far as the record showed, did not have the organizational complexity to justify an accountant position. While the proffered position may involve some accounting functions, the director determined that the primary duties of the position were those of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Those positions, as indicated in the *Handbook*, do not require a baccalaureate or higher degree in a specific specialty. The second reason cited by the director was that the petitioner was not engaged in a type of business for which an accountant would normally be required. The record failed to show that the duties of the position involved complex and advanced

accounting functions, the director declared, or that the job duties could not be performed by an experienced bookkeeping, accounting, or auditing clerk with a sub-baccalaureate level of educational training. The internet job postings did not establish that a degree requirement was common to the industry in parallel positions among similar organizations, the director continued, and the petitioner did not otherwise demonstrate that the duties of the proffered position were so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The director concluded that the proffered 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. The size of the company, counsel argues, is irrelevant in determining whether H-1B status may be granted in the instant petition. Counsel points out that the two opinion letters submitted with the petitioner's response to the RFE were not considered by the director in his decision. Those letters, in counsel's view, are persuasive evidence that the proffered position was that of an accountant and that businesses the size of the petitioner hire in-house accountants with specialty degrees.

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 or training is on-the-job training. *See 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 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 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. Thus, the scope of the proffered position lacks both the breadth and the depth of a management accounting position.

The petitioner stated in Form I-129 that it had fifteen employees, though a DE-6 form in the record lists twice that number in the spring of 2004. The petitioner projected gross annual revenues of \$1.2 million for 2004, but there is no evidence in the record of any income in the short period of time the business was in operation following its establishment in August 2003, or of the volume of business transactions conducted by the petitioner. 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)). Furthermore, while the size of the company does not, in and of itself, determine a company's need for an accountant, its 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 startup company like the petitioner, with modest income, differ greatly from the responsibilities associated with an annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients. 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.¹

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

Considering the duties of the proffered position and the nature and scale of the petitioner's business operations, 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, and the preparation of balance sheets and profit and loss statements – 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. According to the *Handbook*, 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)(I).

Counsel cites the two opinion letters from a CPA and a university professor as evidence that companies similar to the petitioner in size hire in-house accountants, that the duties of the proffered position are those of an accountant, and that their performance requires a baccalaureate degree in accounting or a related field. The CPA letter states that it is common for both large and small companies to hire management accountants because of the ever-increasing complexity in today's business world of maintaining an accurate financial picture. The CPA cites a letter he received from the petitioner which described the proffered position and listed its duties. According to the CPA, cash flow and budgetary projections are duties that are never performed by bookkeepers, while other duties such as financial statement preparation and analysis, developing and modifying computerized accounting software systems, tax/auditing research, consultation services, and the preparation of balance sheets and profit and loss statements cannot be satisfactorily performed by a bookkeeper. The CPA concludes that the proffered position requires the services of an accountant with a baccalaureate degree in accounting, business administration, or finance. The letter from the university professor (of Cal State Fullerton) is similar to the CPA's. It states that many businesses, both large and small, hire in-house accountants to perform a wide range of tasks. The letter proceeds to list “the most commonly performed duties” of managerial accountants, which is a virtually verbatim recitation of the accounting, tax, auditing, and consultation services duties of the proffered position that the professor acknowledges he received in a letter from the petitioner. The professor, like the CPA, concludes that the proffered position requires the services of an accountant with a baccalaureate degree in accounting, business administration, or finance.

It appears that the only documentation the CPA and the university professor received from the petitioner was a letter describing the proffered position and listing its duties. Neither the CPA nor the university professor indicated that he had received any evidence of the petitioner's actual business operations such as the volume of business conducted, gross receipts, or the number of current employees. Furthermore, the assertions by the CPA and the university professor that duties such as the preparation of financial

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.

statements, profit and loss statements, balance sheets, and the use of computerized accounting software can only be satisfactorily performed by accountants with specialty degrees is at odds with information in the *Handbook* that such duties are performed by bookkeeping, accounting, and auditing clerks. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the two opinion letters discussed above are not persuasive evidence that a baccalaureate or higher degree in accounting or a related specialty is the normal minimum requirement for entry into the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Likewise, the letters are not persuasive evidence that such a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required for the position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has also submitted a series of internet announcements for accountant positions as evidence that a baccalaureate degree is the common industry-wide requirement for entry into the occupation. None of the advertising companies is in the same line of business as the petitioner, however, and most or all of the companies appear to be much larger than the petitioner in their scale of operations. Accordingly, the internet job postings are not persuasive evidence that that a bachelor's degree in a specific 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).

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 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 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, or auditing clerk, none of which 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.