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FILE: EAC 04 053 53319 Office: VERMONT SERVICE CENTER

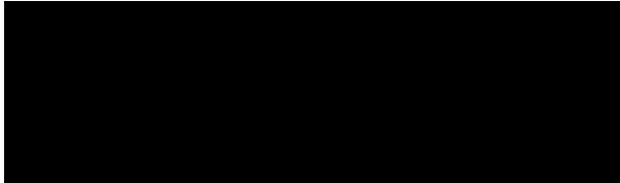
Date: OCT 17 2005

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, 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 chiropractic office and rehabilitation clinic that seeks to employ the beneficiary as an accounting and billing supervisor. 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 proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accounting and billing supervisor. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Study the design and workflow of the current billing and accounting system for the purpose of designing improvements and efficiencies of operation in order to be able to perform the core job duties of the position which include applying principles of accounting to analyze financial information and prepare financial reports;
- Upgrade the existing system;
- Conduct telephone discussions with insurance company representatives;
- Study accounting software through research in applicable manuals and consultations with software publishers;
- Design internal procedures and protocols for the practice, such as implementing solutions for new procedures, re-design of client interview forms, and making modifications to patient software programs; and
- Train employees about system changes and supervise the clerical and administrative staff.

The petitioner requires a minimum of a bachelor’s degree in a business or mathematics related field such as statistics for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties

of the proffered position are varied, but appear to be essentially those noted for bookkeepers, accounting or financial clerks with some supervisory/administrative responsibilities. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

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. . . .

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. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

. . . .

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

. . . .

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

While the beneficiary would not perform all of the above listed duties performed by bookkeepers, financial and accounting clerks, the duties described for the offered position are performed by these occupations. For example, bookkeepers, accounting and financial clerks routinely: design billing and accounting systems using accounting/software programs; examine, analyze and interpret accounting records; institute and maintain billing procedures; and maintain and upgrade systems for recording costs and other financial data.¹ Although the petitioner did not provide financial information about its organization, it states that it has seven employees and a gross annual income of \$436,000, and that its rapid growth has resulted in greater complexity for its billing and accounting systems necessitating the need for a degreed accounting and billing supervisor. The petitioner has provided no documentation or financial records to establish that the accounting and billing requirements of its operation are of such complexity that they require a minimum of a bachelor's

¹ According to the website for Skyline College, a community college located in San Mateo, CA (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.

degree in a specific specialty. Simply going on the 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 190 (Reg. Comm. 1972)). The complexity of the duties for the offered position is established by the financial complexity of the position. As noted above, the duties described are routinely performed by bookkeepers, accounting and financial clerks. The *Handbook* notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, junior accountant positions, as well as occupations in bookkeeping. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submits two opinion letters: [REDACTED] D.P.M.; and [REDACTED] states that the efficient handling of administrative processes in a medical office (such as billing, accounting, and collections) is necessary in order to ensure the success of the practice. As such, it is necessary to hire a supervisor who has the professional background, training and experience in the area of accounting, finance or related fields, such as statistics, to handle the volume of data and details so as not to compromise the viability of the practice. [REDACTED] does not indicate or otherwise establish that his office requires a baccalaureate level education for such positions, or that the industry as a whole routinely requires that level of education. [REDACTED] states that the complexities of the proffered position require the services of an individual with a bachelor's degree in a related field such as accounting, economics, or statistics. [REDACTED] does not provide evidence that his office employs such an individual, nor does he provide any evidence that such a requirement is an industry wide standard such as a labor or market study, survey, or other authoritative labor market data. The documentation submitted by the petitioner in this regard is insufficient to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3).

The duties of the proffered position appear to be routine for bookkeeper, accounting and financial clerks. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described are routinely performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4).

The supervisory duties to be performed by the beneficiary also do not qualify the offered position as a specialty occupation. Those duties described include some general managerial/supervisory duties of clerical and administrative staff. The *Handbook* finds no requirement of a baccalaureate level education to perform these responsibilities. The petitioner has failed to establish that these duties meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2), or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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