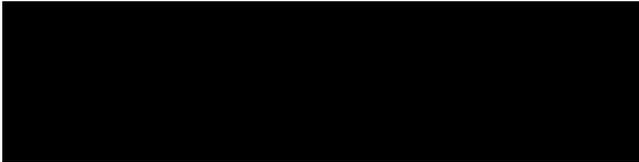


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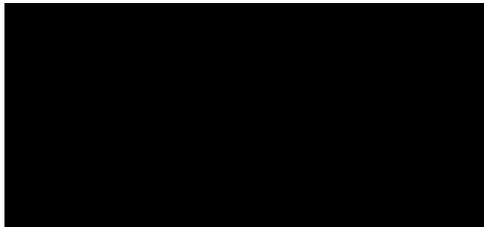
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FILE: LIN 04 089 52319 Office: NEBRASKA SERVICE CENTER Date: **SEP 02 2005**

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:



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 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 an importer and distributor that seeks to employ the beneficiary as an accountant/auditor. The petitioner, therefore, 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 ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 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 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 an accountant/auditor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail compiling and analyzing financial information in order to prepare entries to accounts; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheet and profit and loss statements to summarize the petitioner's current and projected financial position using the computer system; coordinating and implementing accounting and accounting control procedures and tasks; directing and coordinating accounting and bookkeeping tasks; analyzing accounting records to determine the petitioner's financial status; preparing financial reports concerning operating procedures; reviewing data regarding material assets, net worth, liabilities, capital stock, surplus, income, and expenditures; inspecting items in books of original entry to determine if acceptable accounting procedures were followed in recording transactions; counting cash on hand, inspecting notes receivable and payable, negotiable securities, and cancelled checks; verifying journal and ledger entries of cash and check payments, purchases, expenses, and trial balances by examining and authenticating inventory items; preparing reports for management concerning the scope of an audit, financial conditions, and the source and application of funds; recommending improvements to operations and the petitioner's financial position; and examining company payroll and personnel records to determine worker's compensation coverage. The petitioner requires a bachelor's degree with an emphasis on accounting, finance, planning, and statistics for the position.

The director determined that in the context of the petitioner's operation, the beneficiary's duties are a combination of those performed by bookkeeping, accounting, auditing, and procurement clerks as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director stated that the *Handbook* conveys that employers do not require a bachelor's degree in a specific specialty for these occupations. The director concluded that the *Handbook* reveals that the proposed position differs from a management accountant or auditor. The director found the proposed salary similar to a financial clerk's; determined that the job postings did not establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(2); and explained why the petitioner failed to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

On appeal, counsel states that the proposed position is distinguishable from a bookkeeping, accounting, auditing, and procurement clerk; references the *Dictionary of Occupational Titles* (*DOT*) to substantiate his statement; and asserts that clerks do not perform an accountant's duties such as budgeting, performance evaluation, cost and asset management, analysis and interpretation of financial information, and cost accounting. Counsel asserts that the size and scope of a business should not be the sole factor in determining whether a position is a specialty occupation, as only large corporations would have the benefit of an in-house accountant's services. Counsel relays that the proposed position is newly created and that the petitioner requires the services of an accountant due to its anticipated growth. Counsel contends that the job postings show that import and distribution companies routinely employ accountants. Counsel discusses the beneficiary's duties and elaborates on coursework associated with each duty, and conveys that the beneficiary holds a bachelor of science in business administration with a major in accounting.

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.

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. The *DOT's* SVP rating and the Job Zone category do not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO disagrees with counsel's assertion that the proffered position is analogous to an accountant as that occupation is described in the *Handbook*. The *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest field to the proffered position is the management accountant. The *Handbook* indicates:

*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.

The duties described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. Furthermore, the petitioner has three employees, and a projected gross annual income of \$810,000; given this context, it is unlikely that the beneficiary would actually occupy a position as an accountant. The income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the beneficiary's proposed duties. Responsibility for income of \$810,000 differs vastly from responsibility associated with a far larger income. A bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proffered position. The evidence therefore fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Based on the evidence in the record, the AAO finds that the petitioner fails to establish either alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Here, the job postings do not represent organizations that are similar in size and scope to the petitioner, which is a small export and distribution company. RGI develops and produces natural fiber home furnishings, and Unicity International, a nutritional and personal care direct marketing company, has offices in 14 international markets. Although Golden Beach, Inc. is a trading company specializing in seafood and agricultural products, its size is not disclosed in the posting; thus, the AAO cannot determine whether this company is similar to the petitioner. The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proposed position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The AAO has already explained why the proposed duties are distinguishable from those of an accountant. Although the evidence indicates that the proposed duties require some knowledge and application of accounting principles, the evidence does not establish duties that are so complex or unique that they require the services of a person with a baccalaureate degree in accounting.

As the proffered position is newly created, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already distinguished the proposed position from an accountant, and concluded that while the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, the evidence does not establish duties so specialized and complex as to be usually associated with at least a bachelor's degree level of knowledge in accounting or a related field. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.