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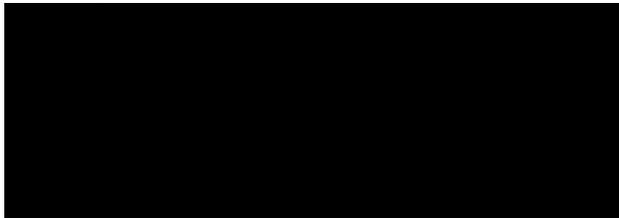
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FILE: WAC 04 048 50331 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2005

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 operates a residential care facility and indicated in the initial petition that it had 12 employees. It seeks to employ the beneficiary as a full-time accountant. 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief and supporting documents.

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 a full-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 examining, analyzing, and interpreting the organization's accounting records and data for purposes of projecting and coping with the demands of its financial, budgetary, and all other relevant accounting requirements; interpreting the organization's financial data to advise management on matters involving effective use of resources and budget forecasts; analyzing organization's past and present financial operation, trends and costs as well as estimated and realized revenues, to appropriately prepare budget and project future revenues and expenses; preparing balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position; auditing contracts, orders, vouchers, and preparing reports to substantiate individual transactions prior to settlement; establishing, modifying, and documenting the implementation of accounting control procedures; and performing all other bookkeeping and accounting tasks such as filing and documenting financial data and records which may be incidental to the beneficiary's duties as an accountant. The petitioner indicated that the proffered position requires a baccalaureate of higher degree in the field of accounting.

The director requested additional evidence, specifically a more detailed description of the work done including specific job duties, and the percentage of time to be spent on each duty. The director requested evidence that the proffered position meets one of the enumerated criteria. Additionally, the director requested copies of the petitioner's federal incomes taxes, quarterly wage reports and an organizational chart.

In response, the petitioner stated that the position of accountant is an organizational requirement brought about by the considerable business accounts on a daily basis. The petitioner noted that though it employed a bookkeeper it needed the services of a full-time accountant. The incumbent in the proffered position would supervise the bookkeeper. The petitioner provided a more detailed position description. The petitioner provided several internet job postings for the position of accountant. The petitioner provided a Form 1040 Individual Income Tax Return with Schedule C attached for tax year 2002 that indicated gross receipts or sales of the petitioner at \$596,676 and wages of \$212,847. The petitioner provided Forms DE-6 indicating approximately 12 employees. The organizational chart indicated 16 employees plus the offered position. The organization chart included positions such as: president, vice president/internal and external affairs, controller/fiscal management, administrative/operations manager, public relations officer, and administrative officer as well as several caregivers.

The director determined that the proffered position was not a specialty occupation. The director noted that merely citing or paraphrasing a position from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) does not establish that the beneficiary will perform work accordingly in a specified occupation. The director noted that the specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. The director found that the petitioner has not demonstrated sufficient organizational complexity to warrant a position of an accountant when the petitioner currently employs a Controller/Fiscal Management and an accountant that was approved by CIS under the name of [REDACTED] which the petitioner did not mention in the organizational chart. Further, the director noted that there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or stockholders. The director determined that the petitioner failed to establish that the proffered position requires a baccalaureate or higher degree or its equivalent.

On appeal, the petitioner contends that the petitioner has a bona fide need for the specialty occupation of accountant as shown by the organizational complexity of the business. The petitioner stated that as an operator of a health care facility, it generates voluminous business accounts on a daily basis. The petitioner contends that the nature of the specific duties pertaining to the position is so specialized and complex that their performance must be associated with the attainment of a baccalaureate degree.

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.

A review of the *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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.

While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial

reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

The *Handbook* states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The petitioner indicated that it had twelve employees and grossed \$596,676 in receipts or sales. The petitioner's organizational chart indicates that its employees include: president, vice president/internal and external affairs, controller/fiscal management, administrative/operations manager, public relations officer, and administrative officer, bookkeeper, caregivers and the proffered position. The petitioner's level of income has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The petitioner has not provided evidence that supports its contention that due to the size and complexity of its business the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation.

The *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

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. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

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

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.

The petitioner stated that the beneficiary would perform all accounting functions including interpreting the organization's financial data to advise management on matters involving effective use of resources and budget forecasts; preparing balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position; and auditing contracts, orders, vouchers, and preparing reports to substantiate individual transactions prior to settlement.

As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.¹ The *Handbook* also states that many graduates of junior colleges and business and correspondence schools, as well as some bookkeepers and accounting clerks, obtain positions as junior accountants.

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits various internet postings for the position of accountant from various companies. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or their nature is undisclosed. For example, Roth Staffing and First Option Financial Recruiting do not indicate the type of service or product provided; Accounting Options indicates that the advertised position is with a health care provider but does not indicate the name or size of the company. However, the duties of the proffered position are not for those of an accountant, as discussed above. No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

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 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.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The director noted that the petitioner had previously petitioned for an H-1B visa for an accountant yet did not indicate this person on the organizational chart. The petitioner did not respond to the director's concerns that it had already petitioned for an H-1B accountant. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner states that the duties of the proffered position are so specialized and complex that a bachelor's degree is mandatory. The petitioner contends its day-to-day cash flows and business transactions "imperatively demand the services of a professional in-house accountant to effectively and competently deal with its business accounts, finances and cash flows." The petitioner's assertions are not substantiated by the facts of the record. The petitioner operates a residential care facility and employs 12 to 16 people. The petitioner asserts that it generates voluminous business accounts on a daily basis. The petitioner has not provided any information about the number of patients or residents it manages which would establish the volume of business. 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)).

Upon review of the record, the petitioner has not documented the duties of the proffered position in relation to the nature of its business and the positions of its current employees such as a president, vice president/internal and external affairs, controller/fiscal management, administrative/operations manager, public relations officer, and administrative officer as well as caregivers. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.