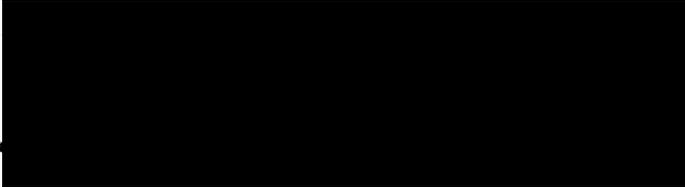


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FILE: WAC 03 006 51201 Office: CALIFORNIA SERVICE CENTER Date: **SEP 19 2005**

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 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 an educational institution. 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 did not establish that the proffered position qualifies as 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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 and an accompanying letter the petitioner described itself as the owner and operator of three Montessori schools in Orange County, California. The petitioner stated that it had 17 employees, an enrollment of 300 preschool and elementary school students, and gross annual income of approximately \$1.5 million. Due to the growth of the schools the petitioner indicated that it needed to hire the beneficiary as an in-house accountant to “organize and maintain” its student accounts. The petitioner described the job as follows:

[The beneficiary] will prepare the quarterly and yearly tax records, payroll statements and deductions, monthly profit and loss reports and financial statements. She will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers. [She] will prepare balance sheets reflecting the school’s assets, liabilities and capital. She will perform audits and prepare reports. [She] will be responsible for updating and maintaining the account receivables that are outstanding.

The beneficiary is qualified for the position, the petitioner indicated, by virtue of her bachelor of science in accountancy from Miriam College in the Philippines, granted on April 12, 1997, and subsequent accounting experience. According to an academic evaluation in the record, the beneficiary’s degree is equivalent to a bachelor of arts in accounting from a U.S. college or university. In response to the RFE the petitioner submitted a detailed list of the proffered position’s duties:

- Prepare daily and monthly balance sheets, profit and loss statements, and various financial reports as required by government agencies.
- Monitor the school’s budgeting performance evaluation, cost and assets management, financial commitments to project future revenues and expenses.
- Prepare cash flow projections and perform variance analysis to assess the sales performance of the company.
- Prepare schedule of the company’s assets and monitor its aging schedule.
- Develop, maintain, and analyze budgets and prepare periodic reports that compare budgeted costs to actual costs. Accountant’s analysis will be reviewed by the accounting manager to ensure that it is an accurate assessment and in compliance with generally accepted accounting principles.
- Prepare and analyze quarterly and yearly tax returns. For each quarter the accountant will determine the percentage of growth in earnings and expenditures as comparable to previous quarters and yearly statements.
- Review the company finances to devise tax strategies and make recommendations on the advantages and disadvantages of certain business decisions or transactions.
- Detail company assets, liabilities, and capital to provide tax planning advice.
- Perform any other related duties or assignments.

The director found that the duties of the proffered position, based on all the evidence of record, were predominantly those of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, rather than the duties of an accountant. The director cited information in the *Handbook* indicating that a baccalaureate degree is not a normal, industry-wide minimum requirement to enter into a bookkeeping, accounting, or auditing clerk position. The record failed to demonstrate, the director declared, that the proffered position could not be performed

by an experienced individual with a sub-baccalaureate level of education. There was no documentation in the record to corroborate the petitioner's assertion that it had a policy of hiring accountants with at least a baccalaureate degree, the director noted, nor any documentary evidence that such a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among organizations similar to the petitioner. Lastly, the director determined that the petitioner failed to show 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 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).

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.

On appeal counsel asserts that the duties of the proffered position accord with the description of accountants in the *Handbook*, and that an accountant requires a baccalaureate degree in a specific specialty, making the proffered position a specialty occupation. While acknowledging that some of the duties could be performed by a bookkeeping or accounting clerk, counsel contends that most of the duties require the expertise of an accountant. Counsel maintains that the petitioner's organizational complexity demands the services of an in-house accountant, and reiterates that the petitioner has a practice of hiring individuals with a baccalaureate degree for its accountant position.

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, as indicated in the *Handbook*, require a bachelor's degree in accounting or a related field. See *id.* at 70. Accountants, therefore, qualify as a specialty occupation under the Act.

By comparison, 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.

Handbook, id., at 437. 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.* Many graduates of junior colleges as well as business and correspondence schools can obtain junior accounting positions. *See id.* at 71. The most significant source of education or training for tax preparers is moderate-term 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 determinative, not the title of the position. The petitioner must show that the performance demands of the position compel its degree requirement. 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 does not establish that the performance demands of the proffered position require a baccalaureate degree in accounting or a related specialty.

According to the organizational chart in the record, there are two positions with accounting functions in the petitioner's management structure – an accounting manager, occupied by [REDACTED] Jr., and the accountant position at issue in this petition, to be filled by the beneficiary. The petitioner asserts that Mr. [REDACTED] previously served as its accountant, but there is no documentary evidence that he has ever been employed by the petitioner. Mr. [REDACTED] name does not appear on any of the W-2 wage and tax statements filed by the petitioner on behalf of its employees in 2003, on any of the payroll records maintained by the petitioner in the first half of 2003, or in any of the quarterly wage and withholding reports filed by the petitioner during 2003. Nor is there an employment contract or any other evidence in the record of Mr. [REDACTED] employment by the petitioner, either as an accountant or as an accounting manager. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Moreover, doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *See id.*

Even if there were evidence of Mr. [REDACTED] employment status and that he had been promoted to the position of accounting manager, the petitioner has not established that it will employ two full-time accountants. The petitioner's description of the accounting manager position indicates areas of overlap with the accountant position, and that the accounting manager will oversee at least some of the work to be performed by the beneficiary. The petitioner's description of the proffered position includes many financial record-keeping functions that bookkeeping and accounting clerks routinely perform. The organizational chart identifies the proffered position as directly subordinate to the accounting manager. As previously noted, the petitioner is a business with approximately \$1.5 million in gross annual income and 17 employees.

Based on the evidence of record, the AAO determines that the duties of proffered position, while they may include some accounting functions, are not 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 AAO agrees with the director that the duties of the position are predominantly those of a bookkeeping, accounting, or auditing clerk. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into such a position, though employers often require a two-year associate's degree in business or accounting.¹ 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).

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 (generally accepted accounting principles), 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. Thus, an associate's

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has not submitted any evidence that a bachelor's degree in a specific specialty is common to the 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 to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that the petitioner's previous hiring of Mr. [REDACTED] demonstrates that it has an established policy of requiring a baccalaureate degree in accounting for its accountant position. There is evidence in the record that Mr. [REDACTED] has such a degree (as well as master's degrees in business administration and public administration). As previously discussed, however, there is no documentary evidence of Mr. [REDACTED] employment by the petitioner, either as an accountant or as an accounting manager. Accordingly, the record does not establish that the petitioner normally requires a bachelor's degree in a specific specialty or its equivalent for the proffered 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. The record reflects that the duties of the position do not exceed those normally encountered in the occupational field of bookkeeping, accounting, and auditing clerks, which do not 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.

degree provides basic knowledge about accounting that can be applied on the job by bookkeeping and accounting clerks. Considering the nature of the petitioner's business and the scale of its operations, the AAO concludes that a bookkeeping or accounting clerk could perform the services of the proffered position.