



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

DD

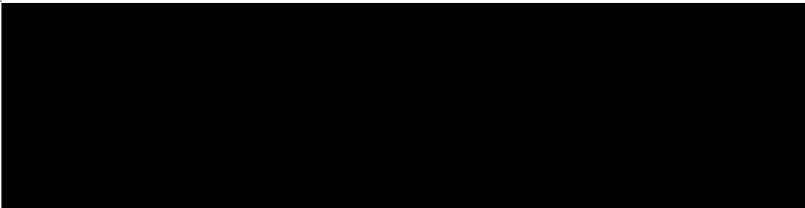


FILE: WAC 04 093 51541 Office: CALIFORNIA SERVICE CENTER Date: SEP 19 2005

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

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 engaged in international trading of consumer products and indicated in the initial petition that it had four employees. It seeks to employ the beneficiary as a full-time accountant/financial analyst. 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, counsel 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) counsel'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/financial analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, examining and analyzing accounting records, financial statements and other financial reports to assess accuracy, completeness and conformance to reporting and procedural standards (20% of time); analyzing business operations, trends, costs, revenues, financial commitments and obligations to project future revenues and expenses or provide advice (15% of time); documenting accomplishments in dealing with general ledger activities, account analysis, reconciliation, preparation for tax filings, fixed assets reports or other related accounting activities (15% of time); executing effective financial reporting functions necessary to support management's reporting and analysis requirements (10% of time); performing all aspects of budget development, cost reporting and cost analysis (10% of time); evaluating financial documents to forecast future economic position and budget requirements related to income, expenses, and earnings based on past, present and expected operations (10% of time); critically reviewing financial reports such as balance sheets and income statement activity and explaining performance and fluctuations (5% of time); computing taxes owed and preparing tax returns, ensuring compliance with payment, reporting and other tax requirements (5% of time); developing, implementing, modifying and documenting record keeping and accounting systems, making use of current computer technology (5% of time); making recommendations to management regarding financial policies and programs (5% of time). The petitioner indicated that the position requires a bachelor's degree in business administration. The petitioner submitted an organizational chart indicating four employees.

The director issued a request for evidence to establish that the proffered position qualifies as a specialty occupation. The director requested copies of the petitioner's organizational chart, quarterly wage reports, business licenses and federal income tax returns for tax years 2001 and 2002.

In response, counsel noted that the petitioner opened in July of 2002 and stated that it earned annual gross sales of over \$2.28 million for that tax year as evidenced by its submitted federal income tax return. Counsel stated that for the most recent fiscal year (January to December 2003) the petitioner had \$5.2 million in gross revenues and provided the petitioner's unaudited income statement which also indicated a net income of \$63,000. The petitioner provided a further breakdown of the duties of the proffered position and stated that the beneficiary would perform a "variety of routine and complex technical accounting and auditing work, which requires the knowledge of General Accepted Accounting Principles (GAAP), the application of accounting theories and practices, the ability to interpret technical and financial data and write routine financial reports and summaries, gained only upon completion of an accounting-specific degree. Counsel contended that the petitioner's high volume of business transactions, as evidenced by submitted documents, requires the services of an accountant/financial analyst. In support of its assertions the petitioner submitted several shipping and purchase invoices and wire transfer statements. Counsel stated that a review of the petitioner's bank statement for its operating account reveals at least \$1 million of monthly cash transactions. Counsel submitted various internet job postings for accounting positions. Additionally, the petitioner submitted DE-6 Forms indicating four employees. The organizational chart submitted in response to the director's request for evidence included the petitioner among a group of companies that share the same CEO.

The director determined that the proffered position was not a specialty occupation. The director found that although the beneficiary may on occasion perform duties relating to accounting, the primary duties as described by the petitioner are that of an advanced bookkeeper or accounting clerk. The director referred to

the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) description of Bookkeeper, Accounting, and Auditing Clerks to support his conclusion. The director determined that the petitioner failed to establish that the proffered position requires a baccalaureate or higher degree or its equivalent.

On appeal, counsel notes that the petitioner is a rapidly growing company. Counsel explains that the petitioner's accounting/financial department contributes to the petitioner's president's other two companies. Counsel contends that the incumbent in the proffered position will supervise the accounting and inventory clerks. Counsel restates and expands on the duties of the proffered position and states that the complexity and intricacy of the duties requires an in-depth comprehension of accounting principles and practice associated with the attainment of a baccalaureate degree. Counsel contends that the petitioner needs an accountant/financial analyst because of the volume of its monthly business transactions of approximately \$500,000.

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.

Very few of the duties described in the *Handbook* 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; or be involved in budgeting, performance evaluation, cost management, and asset management. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Consequently, 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.

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 four employees and grossed over \$2.2 million dollars in sales for the tax year 2002. The federal income tax return indicated a gross profit of \$118,298 and approximately \$30,000 paid in salaries and compensation of officers. In its initial letter the petitioner stated "our latest income has amounted to \$5.2 million." The petitioner did not submit an income tax statement for 2003 either with the petition or on appeal. 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)). Counsel contends that given the petitioner's "nature of business and heavy accounting needs required by its voluminous business transactions (approximately \$500,000 every month as evidenced by its bank statement submitted earlier), [the beneficiary's] professional services is [sic] very much considered a necessity." The record indicates that the petitioner imports and exports hair products, cigarettes and liquor in bulk quantities. The petitioner submitted approximately 11 purchase and shipping invoices with few items sold per invoice, totaling sales of approximately \$1 million. The petitioner's level of income and volume of transactions have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The wire

transfers also reflect relatively large deposits and regular but not frequent deposits (7 wire transfers in October 2003, 2 wire transfers in November 2003, 12 wire transfers in December 2003, 11 wire transfers in January 2004, and 15 wire transfers in February 2004). 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 petitioner's organizational chart indicates that its employees include a president, vice president, sales and marketing manager, accounts receivable/payable clerk and a shipping/receivable (inventory) clerk. The submitted Forms DE-6 for the quarters ending March 31, 2003, June 30, 2003, September 30, 2003 and December 31, 2003 indicate 4 employees. On appeal, counsel contends that the president of the petitioner manages other companies and will benefit from the beneficiary's services and refers to the organizational chart submitted in response to the request for additional information. The AAO notes that in the initial filing the petitioner did not indicate that the beneficiary's duties would involve any other entity than the petitioner. Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

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 prepare, examine and analyze accounting records, financial statements and other financial reports to assess accuracy, completeness and conformance to reporting and procedural standards. The petitioner provided a further breakdown of the duties of the proffered position and

stated that the beneficiary would perform a “variety of routine and complex technical accounting and auditing work, which requires the knowledge of General Accepted Accounting Principles (GAAP), the application of accounting theories and practices, the ability to interpret technical and financial data and write routine financial reports and summarize, gained only upon completion of an accounting-specific degree.”

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

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)(1): 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; Myers and Stauffer LC is a healthcare accounting/consulting firm. The posting for an accountant by Stone Management recruitment firm indicates that the employer is in the media field. 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.

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.

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.

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. Counsel states that the duties of the proffered position are so specialized and complex that a bachelor's degree is mandatory. Counsel's assertions are not substantiated by the facts of the record. The petitioner is a wholesaler of liquor and cigarettes and employs four people. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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 employees currently performing similar duties, the two accounting clerks. 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.