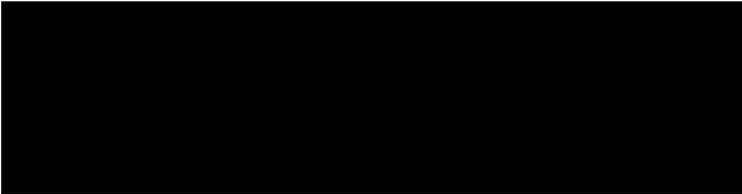




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



D2

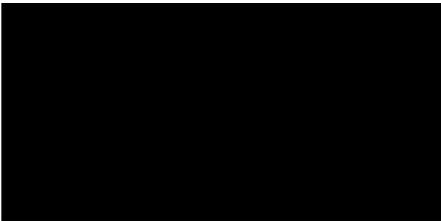
FILE: WAC 03 065 55191 Office: CALIFORNIA SERVICE CENTER Date: **SEP 21 2005**

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 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 a sporting goods company. It seeks to employ the beneficiary as a part-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 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 a part-time accountant. 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 preparing, analyzing, and verifying quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports, and financial statements; preparing the general ledger, monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information to prepare entries into accounts; detailing assets, liabilities, and capital; providing tax planning advice; reviewing finances and current taxes and devising a long-range tax plan and recommending ways to reduce taxes; advising and recommending tax strategies and the advantages and disadvantages of business transactions; devising a financial system for a systematic and smooth inventory procedure; preparing balance sheets, profit and loss statements, checks, payroll, and tax remittances to summarize the petitioner's current and projected financial position; modifying and coordinating implementation of accounting and accounting control procedures; monitoring budgeting, performance evaluation, and cost and asset management; preparing letter correspondence with clients regarding transactions, financing, and billing statements; analyzing transactions and preparing billing statements; and setting up a computerized accounting system that will retain all of the information necessary to prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements.

The director stated that some of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. According to the director, the nature and complexity of the proposed duties combined with the nature of the petitioning entity are factors that are considered when determining whether a position qualifies as a specialty occupation. According to the director, the petitioner does not have the organizational complexity to require the services of an accountant: it has no accounting division, department, team, staff, or bookkeeping, accounting, or auditing clerks to maintain accounting records. The director found inconsistencies in the evidence as the proposed position is titled "accountant," but many of the proposed duties are basic bookkeeping and accounting duties, which are not performed by accountants. The director stated that since the petitioner did not employ bookkeeping, accounting, or auditing clerks (positions which are not specialty occupations), the beneficiary would perform these duties. The director stated that performing some incidental specialty occupation duties such as financial analysis, planning, budgeting, and cost accounting does not establish that the proposed position is a specialty occupation. The *Handbook* reveals, the director stated, that the petitioner does not operate the kind of business requiring an accountant's services on a part or full-time basis for a significant length of time. The director found that the record did not establish that the proposed duties include complex or advanced accounting or required sophisticated accounting techniques. The director stated that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the proposed position parallels that of an accountant as that position is described in the *Occupational Information Network (O\*Net)*, the *Dictionary of Occupational Titles (DOT)*, and the *Handbook*. Counsel asserts that it is proper for the petitioner to rely on the proposed duties to establish the proposed position as a specialty occupation. Counsel declares that there is no inconsistency in the evidence as all positions require a few administrative duties, and all of the proposed duties are those of an accountant even though some are performable by bookkeepers or accounting clerks. Counsel asserts that the director conceded that the proposed duties of financial analysis, planning, budgeting, and cost accounting are an accountant's duties; that all types of businesses employ accountants; and that payroll service firms employ accountants to handle payroll preparation. The director has no authority, counsel contends, to determine an employer's needs or scale or complexity. Counsel states that the proposed position is that of an accountant; it is not a corporate accountant. Counsel asserts that the petitioner is not required to demonstrate a need for the beneficiary for the entire three year H-1B period. Counsel states that the director erroneously interprets the Act and regulations by stating that the evidence must show that an experienced individual whose educational training falls short of a baccalaureate degree could not perform the proposed position. Counsel states that a person can become an attorney without a bachelor's degree, yet this does not make the profession of an attorney any less of a specialty occupation. CIS regulations, counsel states, show that a beneficiary need not possess a degree. Counsel states that the petitioner need not prove that it has previously hired an accountant. Counsel states that the director's decision is conclusory, and is not based on the Act or regulations. Counsel discusses his perception of CIS.

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.

On appeal, counsel states that the proposed position parallels that of an accountant as that position is described in the *O\*Net*, the *DOT*, and the *Handbook*. Counsel's reference to and assertions about the relevance of information from *O\*Net* and the *DOT* are not persuasive. Neither the *DOT*'s SVP rating nor a

Job Zone category indicates 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 *Handbook*, however, provides a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation.

Counsel states that accountants maintain accounting records and that all of the proposed duties are those of an accountant even though some are performable by bookkeepers or accounting clerks. Counsel's statement is not supported by the *Handbook*. The *Handbook* which reports that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. Of these fields, the AAO finds that the closest category to the proposed 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.

Many of the duties described in the *Handbook* do not apply to the proposed 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 is not part of a management team, and the petitioner does not describe the beneficiary as preparing financial reports for nonmanagement groups such as stockholders or creditors. Counsel states that the beneficiary's duty to prepare tax returns for the Internal Revenue Service (IRS) and the California Tax Board are "detailed financial reports for outside agencies." The *Handbook* reports, however, that a tax preparer that prepares tax returns for individuals or small businesses (such as the petitioner) but does not have the background or responsibilities of an accredited or certified public accountant does not require a bachelor's degree. In light of this significant dissimilarity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities are not those 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 proposed position.

Counsel contends that the proposed duties involve financial analysis, planning, budgeting, and cost accounting, which are an accountant's duties. Counsel also contends that the Act, regulations, and case law do not require that the proposed position involve complex or advanced accounting or sophisticated accounting techniques. Counsel asserts that nowhere in the Act, the regulations, and case law is it stated that reviewing, analyzing, and reporting financial records are the only duties that accountants perform. Referring to *Young China Daily v. Chappell*, 742 F.Supp. 552 (N.D. Cal. 1989), counsel states that in the case the court found that the size of an operation is irrelevant in determining whether an occupation is a specialty occupation. According to counsel, the Act and regulations do not state that the petitioner's nature, or whether it employs bookkeepers and accounting or auditing clerks, is irrelevant in determining whether the proposed position is a specialty occupation.

The AAO finds counsel's statements unpersuasive in establishing that the proposed position qualifies as a specialty occupation. The Act is clear in that a position must have the theoretical and practical application of a body of highly specialized knowledge in order to qualify as a specialty occupation. The AAO finds that the level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the proposed duties. Responsibility for income of \$1,329,740, which the petitioner generated in 2002, differs vastly from responsibility associated with a far larger income. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, in light of the income generated by the petitioner, the evidence does not establish that the proposed position would require knowledge in accounting that is at the baccalaureate-level.

Counsel asserts that even if the *Handbook* reports that there are four major fields of accounting, there are minor fields of accounting that are not identified in the *Handbook*. The evidentiary record, however, contains no evidence about minor fields of accounting, and no evidence depicts the proposed duties as encompassed within a minor field of accounting. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For the reasons discussed above, the evidence in the record is insufficient to satisfy 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.

Counsel refers to the *Handbook's* information about accountants to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. As discussed earlier in this decision, the proposed position differs from an accountant. The *Handbook*, therefore, fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the beneficiary's duties differ from those of an accountant as that occupation is delineated in the *Handbook*. While the evidence of record indicates that the proposed duties require some knowledge and

application of accounting principles, in the context of the income generated by the petitioner, the evidence does not establish that the proposed duties are so complex or unique as to require a baccalaureate degree in accounting or a related field.

Counsel states that the petitioner normally requires a bachelor's degree for the proposed position. However, no evidence shows that the petitioner has a past practice of requiring a bachelor's degree for the proposed position. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the petitioner fails 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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 conveyed that the proposed duties differ from those of an accountant, and although the evidence of record indicates that the proposed position requires some knowledge and application of accounting principles, the evidence does not establish duties that are 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.

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.