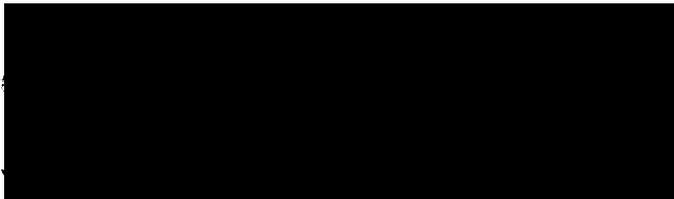


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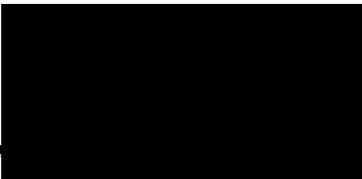
D2

FILE: WAC 02 167 55647 Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 2006**

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 provides mailing services. It seeks to employ the beneficiary as a senior accounting 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 finding that the proffered position is not a specialty occupation. Counsel submits a timely appeal.

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) the 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) and the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a senior accounting analyst, and asserts that the proposed position requires a business economics and business accounting education. 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. These documents describe the proposed duties as follows:

- Control accounts payable by monitoring due dates, taking allowable discounts, maintaining cash flow input and output ratios; monitor vendor performance ensuring accurate billing for work performed; obtain bids for products and services and compare price versus service and quality.
- Exercise tight control of accounts receivables to ensure prompt payment of fees and postage; enforce the policy of securing postage payment in advance of mailing; diligently pursue payment for invoices more than 30 days old.
- Monitor the operating and postage checking accounts, particularly because of the U.S. Postal Service's strict accuracy requirements: over \$1 million each year is run through the account, the postage amounts are stated to three decimal points and computed to four decimal places, and the postage money is advanced by the client.
- Monitor the petitioner's burden rate in order to maintain the percentage of profitability; lead discussions regarding decisions about pricing of services; exercise final approval of deviations from established prices.
- Prepare and/or review quotations from existing and prospective clients for upcoming jobs.
- Maintain all general ledger and journal entries.
- Prepare financial five year forecasts.
- Overall supervision of employees in order to keep production and office overhead under control.
- Provide strong input regarding purchase of new equipment, and disposal/retirement of present, depreciated equipment.
- Make decisions on purchases of office and production supplies.
- Negotiate maintenance equipment contracts and decide the effectiveness of same.
- Prepare year-end figures, trial balances, the audit report, and pro forma profit and loss and balance sheets for the outside certified public accountant (CPA) for preparation of federal and state taxes.

The director stated that the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) provides that in small establishments bookkeeping clerks handle all financial transactions and record keeping. The director concluded that the proposed duties are basically general manager/customer service and general bookkeeping and administrative clerk duties. The director found that the petitioner's educational requirement lacked a factual basis.

On appeal, counsel states that the proposed duties are those of a budget/cost accountant and that they require a baccalaureate degree. Counsel describes the duties of a budget/cost accountant and states that the occupation does not require a CPA. Counsel states that the beneficiary's coursework relates to the proposed duties.

Counsel explains that the petitioner serves large corporations and is not a retail store open to the general public. Counsel describes the petitioner as providing mailing list creation and maintenance, through complete “mailpiece” processing and depositing of the finished product at the post office. Counsel states that out of 350 mailing service companies the petitioner ranks in the upper one-third of all companies in gross sales and sales-per-employee. Counsel states that the beneficiary will make presentations to the chief executive officers and the board of directors of large corporations. Counsel refers to the Dictionary of Occupational Titles (DOT) to show that the offered position qualifies as a specialty occupation. Counsel emphasizes that the beneficiary will perform market pricing decisions requiring college-level education.

Upon review of the record, the petitioner has not established that the proffered position is 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 2006-2007 edition of 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 *Handbook*, a resource that the AAO routinely consults, explains 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, and cost 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.

Counsel contends that the position that is offered here requires a bachelor’s degree. However, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific

specialty; it must submit evidence supporting its contentions. The AAO finds that the submitted evidence provides no factual basis to determine that the offered position is one that normally would require a bachelor's degree or its equivalent in a discipline such as accounting. The submitted survey profiling the mailing industry indicates that sales per employee (SPE) is greatly influenced by the equipment used by employees; thus, the survey provides little insight into the petitioner's day-to-day finances. The record contains no evidence of the petitioner's financial documentation such as its general ledger and journal entries, its burden rate and pricing of services, the equipment used in operating its business enterprise, quotations for jobs, the operating and postage checking accounts, and accounts receivables and accounts payables. The record therefore lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. 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)). Consequently, the petitioner fails to demonstrate a factual basis in which to establish that the offered position is one that normally would require a bachelor's degree or its equivalent in accounting or a related specialty.

The fact that a position involves accounting principles is insufficient to establish it as a specialty occupation, for not all positions applying accounting principles require the application of a bachelor's degree level of knowledge in accounting or a related specialty. For instance, the *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

The *Handbook* states that junior accountants have 2 year degrees. It states:

¹ At its Internet site (<http://www.nsaacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

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.

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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 in a specific specialty. The record lacks sufficient evidence to establish that the proposed duties are complex or unique and thereby require a baccalaureate degree in accounting or a related field. It is for this reason that the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must establish that it normally requires a degree or its equivalent for the position. The AAO notes that the petitioner's July 25, 2003 letter indicated that its treasurer performed the proposed duties; however, the petitioner did not elaborate on the treasurer's educational background and the petitioner did not demonstrate that it has a past practice of requiring a bachelor's degree in accounting or a related field.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. The record of proceeding lacks sufficient evidence to establish that the proposed duties are so specialized and complex as to require a bachelor's degree in accounting or a related field. The petitioner did not submit evidence of financial documentation such as its general ledger and journal entries, its burden rate and pricing of services, the equipment used in operating its business enterprise, quotations for jobs, the operating and postage checking accounts, and accounts receivables and accounts payables. 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)). Absent such evidence, the AAO cannot determine the nature of the proposed duties and whether they are so specialized and complex as to require a bachelor's degree in accounting or a related field. Consequently, the petitioner fails to establish this last criterion at 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.