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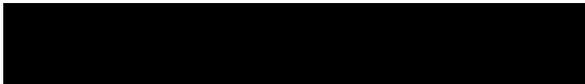


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FILE: EAC 05 036 51505 Office: VERMONT SERVICE CENTER

Date: **AUG 29 2006**

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 materials 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, Chief  
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 a motel. It seeks to employ the beneficiary as an accountant and to extend his classification 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 failed to 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 director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner operates a motel. In its initial submission, including the Form I-129 and an accompanying letter, the petitioner stated that its motel business began in 2001 and has 23-25 employees. Federal tax returns

submitted with the petition list gross receipts for the petitioner of \$496,121 in 2001 (its first partial year of operation); \$1,328,201 in 2002; and \$1,396,819 in 2003. The petitioner proposes to hire the beneficiary for three years, at an annual salary of \$36,000, to serve as an accountant/night auditor, and provided the following description of the job in its initial letter:

[The beneficiary] will be responsible for preparing all relevant state and federal tax returns, preparing regular financial reports and balance sheets, and advising management as to the most cost effective ways to run the business. Accordingly, his financial reports will include financial forecasts and cost management reports. Approximately 60% of [the beneficiary's] time will be spent analyzing financial information detailing assets, liabilities, and capital, and preparing balance sheets, profit and loss statements, and other reports to summarize current and projected company financial positions. Tax return preparation and auditing will occupy approximately 20% of his time, and the remaining 20% will be spent directly advising management as to financial efficiency.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor's degree in accounting, economics, or a related field. The beneficiary is qualified for the position, the petitioner declares, by virtue of his bachelor of commerce degree, specializing in advanced accounting and auditing, from Gujarat University in India, awarded on January 21, 2000, and two years of experience in accounting.

In response to the RFE the counsel provided virtually the same description of the proffered position's duties as the petitioner did in its initial letter, elaborating on the 20% of time spent on tax preparation and auditing to state that the beneficiary would audit contracts and prepare reports to substantiate individual transactions prior to settlement. Counsel indicated that daily bookkeeping duties would continue to be handled by the company's president, and referred to an accompanying letter from the company's secretary stating that the president had been "handling our accounting department since August 2001" and that his duties included "depositing daily cash, accounts receivable, accounts payable, processing financial reports on revenues and expenses, controlling the petty cash, making royalty reports ... and making the payroll biweekly for all employees."

In his decision the director found that performance of the proffered position's duties does not require a bachelor's degree in a specific specialty. The evidence of record did not show that a bachelor's degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, the director determined, or that the proffered position qualifies as a specialty occupation under any other criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel reiterates that the beneficiary will be performing accounting duties in the proffered position, in accord with the description of that occupation in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel quotes an excerpt in the *Handbook* indicating that a bachelor's degree in accounting or a related field is required for most accounting positions. Counsel asserts that the company's president will only perform bookkeeping functions in the future, and that the accounting functions he performed from August 2001 onward will be turned over to the beneficiary. Since accountants require a specialty degree, counsel concludes, the proffered position is a specialty occupation.

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.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant and internal auditor bear the closest resemblance to the proffered position in this case. As described in the *Handbook*, 2006-07 edition, at 70-71:

*Management accountants* – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Among other responsibilities are budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. 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.

*Internal auditors* verify the accuracy of their organization's internal records and check for mismanagement, waste or fraud . . . . Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations . . . .

Most accounting positions require at least a bachelor's degree in accounting or a related field, as indicated in the *Handbook, id.* at 71. The *Handbook* also states, however, that some junior accounting positions require less than a baccalaureate degree:

Many graduates of junior colleges and business and 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.

*Id.* Thus, although most accounting positions require a baccalaureate degree in accounting or a related specialty, it is possible to enter some positions in the occupational field with less than a baccalaureate educational background and/or experience as a bookkeeper or accounting clerk.

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).<sup>1</sup> 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.”<sup>2</sup> “Up to two” of the required years of work experience “may be satisfied through college credit.”

The occupation of bookkeeping, accounting, and auditing clerks is described as follows in the *Handbook*, 2006-07 edition, at 434:

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 represent 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 the completeness and accuracy of data on accounts; and code documents according to company procedures . . . .

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<sup>1</sup> At its Internet site (<http://www.nsacct.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.

<sup>2</sup> 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.”

*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 . .

...  
....

[D]emand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Certified bookkeepers and those with several years of accounting or bookkeeper experience will have the best job prospects [emphasis added].

According to the *Handbook*, a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing clerk positions. *See id.* at 435. 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.* The *Handbook* also indicates that for tax preparers the most significant source of education or training is on-the-job training. *See id.* at 662.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. 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 in this case does not establish that the proffered position requires a baccalaureate degree in accounting or a related specialty. While the position may include some duties that involve accounting and auditing functions, the AAO is not persuaded that they are 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 or higher degree in accounting or a related specialty field. The petitioner's gross annual income for the years 2002 and 2003, as evidenced by the federal income tax returns in the record, was between \$1.3 million and \$1.4 million. While the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with a company of modest income, like the petitioner, differ significantly from the responsibilities associated with an annual income in the tens of millions, or from the responsibilities of performing accounting work for multiple clients. The AAO notes that an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping, accounting, and auditing clerks.<sup>3</sup>

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<sup>3</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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, 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

Based on the evidence of record, and consistent with the director's decision, the AAO determines that the duties of the proffered position are a combination bookkeeping/accounting/auditing clerk and tax preparer, as described in the DOL *Handbook*. A baccalaureate or higher degree is not the normal minimum requirement for entry into such positions. Since bookkeeping, accounting, and auditing clerks, as well as tax preparers, do not require a baccalaureate degree in accounting or a related specialty, 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)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes two internet job advertisements for accounting positions as evidence that a bachelor's degree in accounting or a related specialty is a common degree requirement for accountants. Neither of the companies is in the same line of business as the petitioner, however, and the advertisements do not indicate that their scale of operations is similar to the petitioner's. Thus, the internet advertisements do not establish that a bachelor's degree requirement in accounting or a related specialty is common to the petitioner's 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 accounting or a related specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The proffered position is not unique, and its complexity does not exceed that of a bookkeeping, accounting and/or auditing clerk and tax preparer, which the *Handbook* indicates are positions that do not require a baccalaureate degree in accounting or a related specialty.

With respect to the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – “the employer normally requires a degree or its equivalent for the position” – the petitioner asserts that the company's accounting duties have hitherto been performed by its president. The previously discussed letter from the company's secretary, submitted in response to the RFE, states that the president has a bachelor of science degree from an Indian university. The letter does not identify the field in which the degree was obtained, however, and no photocopy of the degree or evaluation report confirming the U.S. equivalency of the degree have been submitted. Thus, the record does not establish that the petitioner has an established hiring policy for the proffered position of requiring a baccalaureate or higher degree in accounting or a related specialty, or its equivalent, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Moreover, the AAO does not agree with counsel's interpretation of the letter as stating that the duties listed therein only apply to the president's current bookkeeping functions, and not his accounting functions back to August 1991. As previously noted, the letter states that:

[the president] is handling our accounting department since August 1991 to the present date . . . . His duties are as follow[s]: He is responsible for depositing daily cash, account[s] receivable, account[s] payable, processing financial reports on revenues and expenses, controlling the petty cash, making royalty reports and . . . making the payroll biweekly for all employees.

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software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

The foregoing duties are those of a bookkeeping or auditing clerk, as described in the *Handbook*. The letter indicates that they are the duties of the petitioner's accounting department, both before and after the filing of the instant petition. A bachelor's degree in accounting or a related specialty is not required to perform such duties.

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 evidence of record does not show that the duties of the position exceed the occupational scope of a bookkeeping, accounting and or auditing clerk, and tax preparer, which the *Handbook* indicates 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.