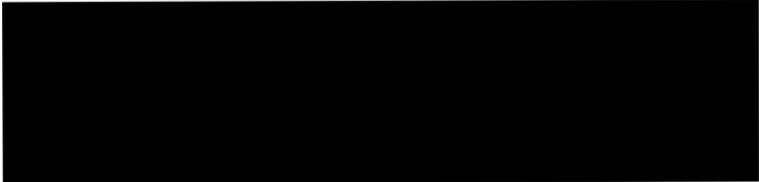




U.S. Citizenship
and Immigration
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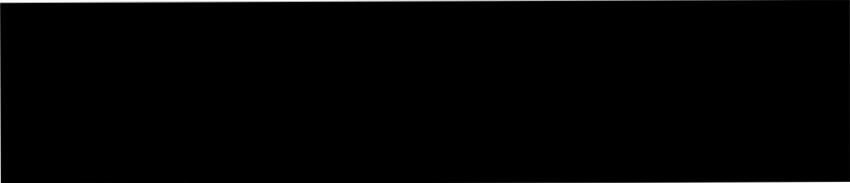
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FILE: WAC 04 250 52423 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 civil and structural engineering company that seeks to employ the beneficiary as a cost accountant. The petitioner 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 petitioner did not establish that the proffered position is a specialty occupation. On appeal, the petitioner submits a letter.

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 cost accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the September 7, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: conducting studies which provide detailed cost information not supplied by general accounting systems; planning a study and collecting data to determine costs of construction activity, such as raw materials, purchases, inventory and labor; analyzing changes in construction design, raw materials, methods and services provided to determine effects on cost; analyzing actual construction costs and preparing periodic reports comparing standard costs to actual construction costs; performing bill of material standard cost and maintenance; assisting in the development of annual budgets and periodic forecasts, such as creating a budget for organization, including for construction, administration, capital investment and financial budgets; providing management with accurate, timely and insightful information relating to material costs, labor costs, and other costs related to construction services; preparing special analyses and studies, including cost projections, studies and account analysis; assisting in maintaining an adequate system of internal controls within cost accounting; identifying and measuring opportunity costs for making planning decisions; approximating activity costs using variable and fixed costs and using cost/benefit analysis to make information choices; and maintaining a strong system of internal controls, which will insure the safeguarding of assets. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the petitioner did not establish that the proffered position was a specialty occupation because it was more like bookkeeping, accounting or auditing clerk than an accountant. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that it established that a bachelor's degree is the normal minimum requirement for entry into a position as an accountant. The petitioner also states that it established that the nature of the duties of the proffered position is so specialized and complex that the knowledge requirement to perform the duties is usually associated with the attainment of a bachelor's degree. The petitioner asserts that the director acknowledged that some of the duties of the proffered position were those of an accountant. The petitioner responds to that acknowledgement by stating the primary duties of the position are those of an accountant, even if the position may encompass some peripheral bookkeeping duties. The petitioner states that the director's assertion that the petitioner does not engage in the type of business that requires an accountant is a misstatement of the *Handbook's* premise. The petitioner states that it is engaged in multiple financial transactions on a daily basis, and that its management needs ready access to detailed financial information.

To the extent that they are described in the record, some of the duties appear to involve some level of accounting. However, not all positions that involve accounting and are labeled by the employing firm as accountant positions are specialty occupations. The critical question is whether performance of the particular position in question involves the theoretical and practical application of highly specialized accounting knowledge that is attained only by at least a bachelor's degree or its equivalent in accounting or a related specialty.

Not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not necessarily establish a proffered position as a specialty occupation. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The 2005-2006 *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. 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 the employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand 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. Those with several years of accounting or bookkeeper certification will have the best job prospects.¹

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant®/Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the submitted matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.²

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree,³ the AAO turns to the record for

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

² Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

³ According to the website for Skyline College, a community college located in San Mateo, CA

information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B workers as an accountant. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

In the director's request for evidence, he asked the petitioner to provide evidence to establish that the proffered position was a specialty occupation. In reply, counsel stated that the petitioner established that the position was a specialty occupation by virtue of the evidence submitted with the petition, and that "it would be entirely redundant to reiterate the petitioner's explanation concerning the position's description and just as repetitive to repeat its justification for the position requirements, may we then refer the Service to the enclosed copy of the petitioner's letter dated September 7, 2004." The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). The information provided by the petitioner in its response to the director's request for further evidence did not clarify or provide more specificity to the original duties of the position. Consequently, the petitioner chose to limit the record to generic descriptions of the proposed duties, such as "Conduct studies which provide detailed cost information not supplied by general accounting systems"; "Plans study and collects data to determine costs of construction activity, such as raw materials, purchases, inventory and labor"; and "Maintains a strong system of internal controls, which will insure the safeguarding of assets." The petitioner provides no explanation of the processes and knowledge that the beneficiary would apply in the performance of these or any other duties. Nor does the petitioner describe or provide examples of specific matters of the petitioner's business and explain how the beneficiary's work on such matters correlates with highly specialized knowledge only attained by achieving a bachelor's degree, or its equivalent, in a specific specialty. Consequently, as evident in the discussion below, the record contains insufficient information to satisfy any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 turns first to 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

(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. Thus an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

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. Counsel states that the beneficiary's duties are those performed by a cost accountant, which the *Handbook* identifies as one of the titles used for management accountants. 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.

The AAO notes that many of the duties described in the *Handbook* do not 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, or regulatory agencies. As described in the record, the general scope and complexity of the beneficiary's duties and responsibilities do not align with the *Handbook's* general description of management accountants. Consequently, the *Handbook's* reporting that the management accountant occupation, as therein described, generally requires a bachelor's degree in accounting or a related field does not support the proffered position as requiring such a degree.

The record shows that the petitioner, an engineering firm, employs five persons, and earns a gross annual income of \$434,798. While the petitioner stated that it had numerous daily financial transactions that necessitate the hiring of a person with a bachelor's degree in accounting, there is no evidence in the record to support this assertion. 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)). The record does not establish that the beneficiary would perform actual work that requires at least a bachelor's degree in accounting. While the size of the petitioning entity is not relevant in determining whether a position qualifies as a specialty occupation, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of \$435,000 differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the

accounting work of many clients. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Accordingly, the petitioner has not established 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The first alternative prong of the second criterion requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted numerous Internet job listings for cost accountants, some of which were with engineering firms. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. As noted previously, the petitioner has not established that the duties of the proffered position require at least a bachelor's degree level of knowledge in accounting. Thus, the advertisements have little relevance.

The petitioner has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree, as required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. As indicated in the earlier discussion of the petitioner's exclusively generic description of the proffered duties, the record does not develop the duties with sufficient specificity to evidence the level of specialization and complexity required by this criterion. Consequently, the petitioner 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 petitioner will employ the beneficiary in 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.