

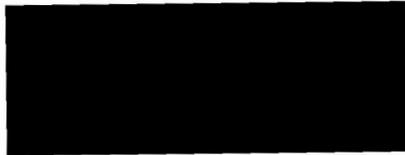


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FILE: EAC 05 003 51166 Office: VERMONT SERVICE CENTER Date: **APR 12 2006**

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.

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 transportation service management company. It seeks to employ the beneficiary as an accounts receivable accounting specialist. 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.

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 denial letter; and (3) 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 an accounts receivable accounting specialist. Evidence of the beneficiary's duties includes: the Form I-129 petition; the attachments accompanying the Form I-129 petition; and the petitioner's support letter. According to this evidence, the beneficiary would compile, process, manage, reconcile and post receivables for contract accounts. The petitioner seeks to employ the beneficiary, who holds a master's degree in accounting from Strayer University which is located in the United States.

In the denial, the director concluded that the proposed duties correspond with those of a financial clerk as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reports that employers do not require financial clerks to possess a baccalaureate degree.

On appeal, counsel states that the proposed duties are more technical and specialized than those of a clerk. The petitioner's business, counsel asserts, has large contracts that require a person with specialized accounting knowledge to oversee. Counsel states that the beneficiary will enhance the accounts receivable system and oversee clerks as well. Counsel asserts that the proposed position requires a baccalaureate or higher degree.

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 *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* about the duties and educational requirements of occupations. The *Handbook* 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.

The record reflects that the beneficiary's duties, as described in the petitioner's September 23, 2004 letter, are limited in scope to dealing with accounts receivables. Thus, the beneficiary will not be involved in budgeting, performance evaluation, or cost and asset management; or in preparing financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. In light of the significant dissimilarity between the beneficiary's duties and the *Handbook's* description of an accountant, the scope, breath, and complexity of the proposed duties and responsibilities differ from those of an accountant.

In addition, the AAO finds that the evidence in the record is insufficient to show that the proposed position requires theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting or a closely related field. The record does not contain any evidence relating to the petitioner's financial transactions involving accounts receivables. Without such evidence, the AAO cannot determine the level of accounting knowledge that will be required in handling accounts receivables. For instance, there is no information about the types, volume, and nature of the accounts receivables transactions. 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 *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."

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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

The AAO agrees with the director's conclusion that the proposed duties resemble those of financial clerks, particularly an accounting clerk, as that occupation is depicted in the *Handbook*. The *Handbook* portrays an accounting clerk as follows:

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. In addition, their responsibilities vary by level of experience. 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. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

*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.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases. They now enter information from receipts or bills into computers, and the information is then stored either electronically or as computer printouts (or both). . . .

The *Handbook* states 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.<sup>3</sup>

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"proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

<sup>3</sup> The website from Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://www.skylinecollege.net)) reflects that 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 generally accepted accounting principles (GAAP), forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software

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.

There is 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. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence to establish that the proposed duties are complex or unique, thereby requiring a baccalaureate degree in accounting or a related field. Furthermore, the AAO finds that the proposed duties correspond with those of a financial clerk, particularly an accounting clerk, which is an occupation the *Handbook* reports does not require a bachelor's degree in accounting or a related discipline. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the petitioner must normally require a degree or its equivalent for the position. There is no evidence in the record to establish this criterion.

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. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence that would establish the nature of the proposed duties is specialized and complex, requiring a bachelor's degree in accounting or a related field; and the proposed duties are more akin to those of an accounting clerk, an occupation that the *Handbook* explains does not require a bachelor's degree in a 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).

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 on this ground.

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.

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