

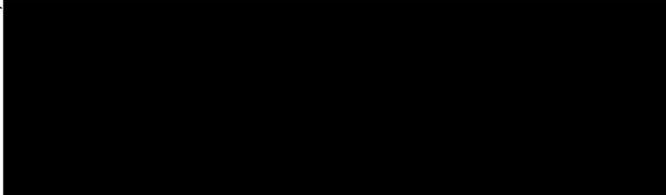
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U.S. Citizenship
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Services

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FILE: WAC 05 160 50873 Office: CALIFORNIA SERVICE CENTER Date: **DEC 04 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: Self-represented

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, 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 textile wholesale company. It seeks to employ the beneficiary as an accountant and to classify her 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 grounds that the record failed to establish that the proffered position qualifies as a specialty occupation or that the beneficiary is qualified to perform the services of 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 notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a textile wholesaler of 100% polyester 70-dernier interlock lining, that also provides its customers with their microfiber, polar fleece, and double georgette requirements. The petitioner indicated that it was established in 1997, has ten employees and gross annual income of \$2.4 million, and is experiencing rapid growth. To handle the company's accounting backlog the petitioner proposes to hire the beneficiary as an accountant for three years, at a monthly wage rate of \$2,000. The duties of the proffered position, and the percentage of time required by each duty, were listed as follows:

- Analysis (30%) – [The beneficiary] will survey the establishment's operations to ascertain accounting needs. She will analyze operations, trends, costs, revenues, financial commitments, and obligations incurred, to project revenues and expenses; and will analyze records of financial transactions to determine accuracy and completeness of entries. She will appraise, evaluate and take an inventory of real property and equipment, and record description, value, location, and other information. Furthermore, she will audit contracts, and prepare reports to substantiate transactions prior to settlement.
- Recording and evaluating financial information (40%) – [The beneficiary] will establish a table of accounts, and will assign entries to proper accounts. She will develop, implement, modify and document budgeting, cost, general, property, and tax accounting systems. Moreover, she will develop, maintain and analyze budgets, and prepare periodic reports comparing budgeted costs to actual costs. She will compute taxes owed, ensuring compliance with tax payment, reporting, and other tax requirements.
- Reporting (20%) – Based on analysis of available data [the beneficiary] will predict revenue and expenditures, and submit reports to management. She will prepare balance sheets, profit and loss statements, amortization and depreciation schedules, and other financial reports. She will report finances of our establishment to management, and will advise management about resource utilization, tax strategies, and will formulate assumptions underlying budget forecasts.
- Other duties (10%) – Aside from the conventional accounting duties listed above [the beneficiary] will also adapt our accounting and record keeping functions to current technology of computerized accounting systems. She will also direct activities of workers performing accounting and bookkeeping tasks.

The minimum educational requirement for the position, the petitioner indicated, is a bachelor's degree in accounting or its equivalent. The beneficiary is qualified for the job, the petitioner declared, by virtue of her bachelor of science in commerce, with a major in accounting, from Centro Escolar University in the Philippines, granted on May 18, 1976, and many years of experience as an accountant in the Philippines. Documentation submitted with the petition included copies of the petitioner's federal income tax returns for 2002 and 2003, listing gross receipts for those years of \$1,832,545 and \$2,203,606, respectively; excerpts from the petitioner's website including a company profile; a sample of its products; a list of the company's clients; some shipping invoices; photographs of the business premises; and letters from prior employers of the beneficiary.

In response to the RFE the petitioner stated that the beneficiary would not directly supervise any staff, but would consult with the whole organization with respect to the company's accounting functions. The petitioner reiterated its contention that the company foresees steady growth in its client base, necessitating the employment of an accountant to facilitate its expansion, and submitted its business plan for 2005. An official transcript of the beneficiary's academic record at Centro Escolar University was submitted, together with an

academic equivalency evaluation of the beneficiary's education from the Trustforte Corporation in New York City which concludes that the beneficiary's education in the Philippines is equivalent to a bachelor of business administration, with a concentration in accounting, from an accredited U.S. college or university. The petitioner also resubmitted letters from previous employers of the beneficiary in the Philippines.

In his decision the director found that while some of the duties of the proffered position involve accounting tasks, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the proffered position could not be classified as an accountant position for two reasons. The first was that the overall duties of the position were closer to those of a bookkeeping, accounting, or auditing clerk, as described in the DOL *Handbook*. Those positions, the director pointed out, do not qualify as specialty occupations because they rarely require baccalaureate level education in a specific specialty. Even if the beneficiary did perform some accounting-related functions, the director stated, "those duties would only be incidental to the primary duties" of a bookkeeping, accounting, or financial clerk. The director also found the petitioner's statement in its initial letter to the service center that the beneficiary would "direct activities of workers performing accounting and bookkeeping tasks" to be inconsistent with its statement in response to the RFE that "the beneficiary will NOT DIRECTLY SUPERVISE any staff, but will consult with the whole organization [emphasis in the original]," which cast doubt on the actual duties of the proffered position. The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engaged in the type of business for which an accountant would typically be required for any significant length of time. In this connection the director found that the petitioner's business operations are not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting functions. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). In addition, the director found that the record failed to establish that the beneficiary is qualified for the position, citing apparent alterations in the letters from prior employers and the petitioner's failure to provide the beneficiary's original academic transcript.

On appeal the petitioner asserts that the director erred in finding that the duties of the proffered position are primarily those of a bookkeeping, accounting, and auditing clerk, rather than those of an accountant. The job description provided by the petitioner is fully consistent with the *Handbook's* description of an accountant, the petitioner contends, and the company has a legitimate need for an accountant's services in view of its business growth. The petitioner provided a revised listing of the job duties, and the percentage of time required by each duty, which reads as follows:

- The beneficiary will analyze and review existing company's overall management and administrative operations and evaluate the efficiency, effectiveness and compliance with corporate policies and procedures, laws, and government regulations. [Overall duty, to which no percentage of time is assigned.]
- The beneficiary will analyze and interpret current financial data for the purpose of developing appropriate accounting and financial policies. She will develop and implement new accounting methods, processes and improvements in line with our goal to automate our accounting systems. (15%)
- The beneficiary will analyze our records of financial transactions to determine the accuracy, integrity and completeness of entries. She will further analyze operations, trends, costs, revenues, financial commitments and obligations incurred, to project future revenues and expenses. (25%)

- The beneficiary will modify and coordinate, as well as implement, the petitioner's overall management, operational, administrative, as well as accounting control procedures. Her duties will also entail budgeting, performance evaluation, cost management and asset management. (10%)
- The beneficiary will oversee the petitioner's financial activities. She will examine, analyze and interpret accounting records for the purpose of giving management advice or preparing statements. She will install and/or advise on our systems of recording costs or other financial budgetary data. (25%)
- The beneficiary will advise on and recommend to management regarding tax strategies, as well as establish assumptions that underlie budget forecasts. She will advise us on advantages and disadvantages of certain business decisions or transactions in relation to the financial standing of the petitioner. (10%)
- The beneficiary will oversee the petitioner's balance sheets, profit and loss statements, necessary checks, bi-monthly payroll, tax remittances and other reports to summarize the petitioner's current and projected financial position. (15%)

The petitioner asserts that it is an industry standard for companies in the textile industry to hire accountants with a baccalaureate level education, and submits letters from the presidents of five other textile wholesale companies attesting that their academic requirement for accountants is a baccalaureate degree in a related field. With respect to the beneficiary's academic transcript, the petitioner points out that it submitted a sealed copy of the beneficiary's official transcript from Centro Escolar University, bearing a stamp of the school's registrar dated July 8, 2005.

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 appears closest to the proffered position in this case. As described in the *Handbook*, 2006-07 edition, at 70:

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.

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. at 72. 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).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."

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. 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).

¹ 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.

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."

The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree in accounting or a related specialty. While the position may include some duties that involve accounting 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 degree or its equivalent in the field of accounting or a related specialty field.³ In the RFE the director noted the petitioner's statement in its initial letter to the service center that the beneficiary would direct the activities of other employees performing accounting and bookkeeping tasks, and advised the petitioner to provide an organizational chart identifying all employees by name and job title and describing the duties and educational levels of all employees under the direction of the proffered position as well as any supervisors or managers superior to the proffered position. It was proper for the director to request the foregoing information about the petitioner's organizational structure to demonstrate the nature of the proffered position's duties, its place in the company hierarchy, and its managerial component. The petitioner did not submit the requested organizational chart in its response to the RFE, or in support of the instant appeal. The petitioner has not identified any other positions in its organization, except for the president, or described the job duties of any other employees. In its response to the RFE the petitioner emphasized that the beneficiary would not directly supervise any other employees, without explaining this departure from its previous statement that the beneficiary would direct the bookkeeping and accounting tasks of other employees. These omissions and inconsistent statements have not been rectified on appeal. Nor has the petitioner addressed the director's finding of apparent alterations in the letters from previous employers of the beneficiary. Furthermore, while the petitioner stated in its Form I-129 that it has ten employees, the DE-6 forms (State of California wage and withholding reports) of record list only one employee for the four quarters of 2004.

Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)). Moreover, it is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). Doubt cast on any aspect of the petitioner's evidence also reflects on the reliability of the petitioner's remaining evidence. See *id.*

In view of the evidentiary omissions and inconsistencies discussed above, the record does not establish that the duties the beneficiary would perform in the proffered position require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proffered position qualifies as specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform services in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(1)(B)(I).

³ According to the website for Skyline College, a community college located in San Mateo, California, (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 software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

Since the beneficiary's qualifications to perform services in a specialty occupation are relevant only if the proffered position is a specialty occupation, the AAO will not further address that issue in this appeal.

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.