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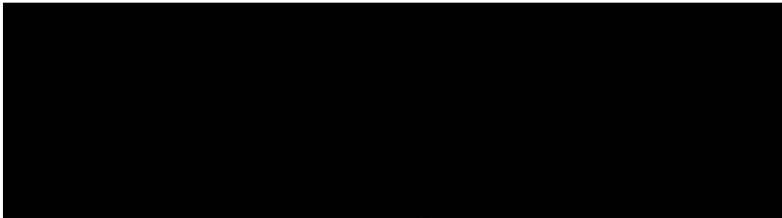
FILE: WAC 04 134 53025 Office: CALIFORNIA SERVICE CENTER Date:

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 documents 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 Director of the California Service Center denied the nonimmigrant visa petition and subsequently adjudicated an appeal as a motion to reopen and again denied the petition. 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 bedroom furniture and mattress retailer.<sup>1</sup> It seeks to employ the beneficiary as a controller and 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 proposed position fails to qualify as a specialty occupation. Counsel submitted 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.

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<sup>1</sup> It is noted that the Form I-129 petition indicates that the petitioner provides residential care services.

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 first denial letter; (5) Form I-290B and accompanying documents; (6) the director's second denial letter; and (7) Form I-290B and the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a controller. 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 RFE. The petitioner describes the beneficiary's duties as follows:

[The beneficiary] is in charge of directing the company's financial activities. In that respect, to a great extent her position involves traditional duties associated with a Senior Accountant, in addition to complex financial and economic analysis, and providing advice on resource management, budgeting, pricing, and inventory issues. . . . [The beneficiary] is responsible for analyzing our business and financial practices, policies, and accounting procedures. Based on her findings, she advises the company on ways of improving efficiency and **productivity, while reducing costs**. She also establishes and implements the company's financial and economic policies and protocols. . . . [S]he must conduct regular audits of the company finances, assets, inventory and equipment costs, and prepare financial reports, payroll, and tax documents. Performance of these duties involve: Direction and supervision of accounting tasks; review of financial transactions to ensure accurate transfer between books of original entry and the general ledger; review and preparation of payroll documents; audit of accounts receivables; supervision and audit of purchase records with inventory stocks; preparation of monthly accounts, financial statements, review of general market variables affecting our business, assessment of the company's pricing strategies, cost benefit analysis, and other complex economic and financial analysis.

The petitioner requires a baccalaureate degree for the proposed position.

The director denied the petition on October 21, 2004, and on February 10, 2005 again denied the petition. In the February 10, 2005 decision, the director stated that many of the proposed duties reflect those of a controller as described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which qualifies as a specialty occupation. However, the director stated that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that each position must be evaluated based on the nature and complexity of the actual job duties. The director found two reasons as to why the record is insufficient to classify the proposed position as that of a controller. He noted that the first reason is that the petitioner does not have the organizational complexity to certify a position for a controller. According to the director, the beneficiary would perform some incidental financial analysis, planning, budgeting, or cost accounting duties, but would primarily perform the duties of bookkeeping, accounting, and auditing clerks, which are not specialty occupation duties. The director found that the second reason as to why the proposed position is not an

accountant<sup>2</sup> is that the petitioner does not engage in the type of business that typically requires the services of an accountant on a regular part-time or full-time basis for a significant length of time, and does not have the scale or complexity to require the services of a full-time corporate accountant. The director noted that the record does not establish that the beneficiary's duties entail complex or advanced accounting or require knowledge of sophisticated accounting techniques.

On appeal, counsel states that although the director's February 10, 2005 decision remedied discrepancies in his October 1, 2004 decision, it failed to address the evidence and the substantive and procedural issues raised on appeal and in the petitioner's RFE. Counsel contends that the October 1, 2004 decision mischaracterized the nature of the petitioner. According to counsel, the proposed position qualifies as a specialty occupation as the *Handbook* reports that a controller requires at least a bachelor's degree in a related field.

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.

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.

Factors often considered by CIS when determining whether a position qualifies as a specialty occupation 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)).

The AAO first considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

In his decision the director stated that the petitioner is not in the kind of industry that typically employs a controller. The AAO does not agree with the director's conclusions regarding the companies or industries employing controllers for the 2006-2007 edition of the *Handbook* indicates that controllers can be found in every industry. Notwithstanding this, the AAO does not find that the petitioner would employ the beneficiary in a specialty occupation.

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<sup>2</sup> The director mistakenly states that the petitioner seeks the services of an accountant. The Form I-129 petition indicates that it seeks to employ the beneficiary as a controller.

The petitioner indicates that the proposed position is that of a controller. The *Handbook*, a resource that the AAO routinely consults, describes a controller as directing “the preparation of financial reports that summarize and forecast the organization’s financial position, such as income statements, balance sheets, and analyses of future earnings or expenses”; as “in charge of preparing special reports required by regulatory authorities”; and as overseeing “the accounting, audit, and budget departments.” It reports that “[a] bachelor’s degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers.” Thus, based on the information in the *Handbook* a controller would qualify as a specialty occupation under the Act.

The petitioner submitted no evidence to establish that the proposed position is that of a controller. For example, the submitted organizational chart does not depict the beneficiary as directing employees in the preparation of financial reports. No evidence in the record demonstrates that the petitioner has an accounting, audit, or budget department for the beneficiary to oversee. Thus, there is no evidence in the record that shows that the proposed position is similar to that of a controller, as described in the *Handbook*.

The petitioner stated that the beneficiary’s “position involves traditional duties associated with a Senior Accountant.” The *Handbook* explains that specific job duties vary widely among the four major fields of accounting. The closest category to the proffered position is the management accountant. In the *Handbook*, management 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 petitioner asserts that its position is that of a controller and that the beneficiary’s “position involves traditional duties associated with a Senior Accountant.” However, the petitioner must do more than submit a job description and assert that the position qualifies as a specialty occupation. It must submit evidence supporting its contentions. The record contains income federal tax records, real property tax records, employee wage records, an organizational chart, advertisements, and other documents. But it contains no financial statements, prior budgets, general ledger records, accounts payable and accounts receivable records, purchase and inventory records, and monthly accounts - even though the beneficiary’s duties involve these records. The record does not describe the financial practices, policies, and accounting procedures that the beneficiary will analyze within the context of the petitioners business, a bedroom furniture and mattress retailer with 5-7 employees. Without this type of evidence, the record as constituted is not sufficient for the AAO to determine the level of accounting knowledge required in handling financial transactions for the petitioner. It does not establish that the beneficiary would be employed as a controller or an accountant and that the position requires a baccalaureate degree in a specific academic field. 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)).

Even though a position involves accounting principles this does not establish it as a specialty occupation, for not all positions applying accounting principles require the application of baccalaureate-level knowledge in accounting or a related field. 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).<sup>3</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>4</sup> "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:

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.

The *Handbook* also states that financial clerks have at least a high school diploma, and for bookkeepers and accounting clerks, employers often require an associate's degree in business or accounting.<sup>5</sup>

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<sup>3</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>4</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."

<sup>5</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 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 package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

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 record contains no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the petitioner must show 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 of financial statements, prior budgets, general ledger records, accounts payable and accounts receivable records, purchase and inventory records, monthly accounts, and records pertaining to financial practices, policies, and accounting procedures. Absent such evidence, the record is insufficient to establish that the proposed duties are complex or unique and thereby require a baccalaureate degree in accounting or a related field. 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)). As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires the petitioner to normally require a degree or its equivalent for the position.

To establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) the petitioner must demonstrate 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 in a specific academic field. The record lacks evidence of financial statements, prior budgets, general ledger records, accounts payable and accounts receivable records, purchase and inventory records, monthly accounts, and records pertaining to financial practices, policies, and accounting procedures. Without this evidence, the record is insufficient to establish that the nature of the proposed duties. It therefore fails to show that the proposed duties are specialized and complex and require a bachelor's degree in accounting or a related field. 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 establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Although the respondents argue that their rights to procedural due process were violated, they have not shown that any violation of the regulations resulted in "substantial prejudice" to them. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The respondents have fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied

the petition. As previously discussed, the petitioner has not met its burden of proof and the denial was the proper result under the regulation. Accordingly, the petitioner's claim is without merit.

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.