

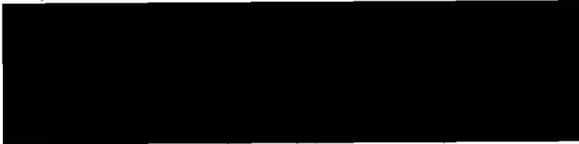
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 246 52353 Office: CALIFORNIA SERVICE CENTER Date: **DEC 19 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 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 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 an insurance company that seeks to employ the beneficiary as a budget accountant 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 based on a determination that the position was not a specialty occupation.

On appeal, the petitioner asserts, through counsel, that the proffered position's duties are the duties of a budget accountant, as set forth in the *Occupational Outlook Handbook (Handbook)*. The petitioner asserts that it has a bona fide need for a budget accountant, and asks that the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) be approved.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; (5) Form I-290B, with counsel's brief, and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the position it is offering to the beneficiary meets statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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.

U.S. Citizenship and Immigration Services (CIS) interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See* 8 C.F.R. § 214.2(h)(4)(ii).

In order to determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

In the present matter, the petitioner asserts that it seeks the beneficiary’s services as a budget accountant on a part-time temporary basis. Evidence of the beneficiary’s duties includes: the Form I-129 and letter of support, and the petitioner’s response to the director’s RFE containing a description of the petitioner’s business and a description of the proffered position duties and responsibilities. As described by the petitioner, the proffered position would require the beneficiary to do cash management (40% of the time), budget analysis (40% of the time), and controlling activities (20% of the time). Specifically, the position would require the beneficiary to perform the following duties:

(Cash management)

- Conduct analysis of information affecting investment or resource allocation programs of company;
- Analyze financial information to forecast business, industry and economic conditions;
- Develop, maintain and analyze operational and statistical data;
- Prepare and analyze quarterly forecasts and an annual plan.

(Budget analysis)

- Establish economic objectives;
- Evaluate expenditures and develop budgetary forecasts;
- Compile and analyze business unit plan, plan updates, strategic plan and profit and loss statements;
- Forecast monthly and annual revenue and expense budgets for all operations.

(Controlling activities)

Keep abreast of current management accounting practice within and outside the insurance sector;

Receive phone calls from customers requesting explanations and pro-rated figures on insurance bills.

To make its determination whether the employment described qualifies as 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; and 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 considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 director found that the proffered position's duties as described by the petitioner were closely related to the duties of a specialty occupation, budget analyst. The director found, however, that the petitioner had failed to establish that its business would utilize the beneficiary in a budget analyst or a budget accountant capacity. The petitioner asserts that the proffered position duties are those of a budget accountant, and not those of a budget analyst, and the petitioner asserts that it has a bona fide need for a budget accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of budget analysts and accountants. The *Handbook* provides on page 77, that:

In private sector firms, a budget analyst examines budgets and seeks new ways to improve efficiency and increase profits. . . . Budget analysts have many responsibilities in these organizations, but their primary task is providing advice and technical assistance in the preparation of annual budgets. . . . Analysts examine the budget estimates or proposals for completeness; accuracy; and conformance with established procedures, regulations, and organizational objectives. Sometimes, they employ cost-benefit analysis to review financial requests, assess program tradeoffs, and explore alternative funding methods. They also examine past and current budgets and research economic and financial developments that affect the organization's spending.

The *Handbook* does not contain a description for a budget accountant. The discussion on management accountants, contained on page 70 of the *Handbook* provides, however, that:

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 their 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 in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The *Handbook* states on page 71 that most accountant positions require at least a bachelor's degree in accounting or a related field. However, the *Handbook's* discussion of the occupation of accountants on page 72 additionally reflects 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 their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

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 subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.¹

The AAO finds the discussion on management accountants to be generally reflected in the petitioner's description of the proffered position duties. Nevertheless, the AAO finds that the duties of the proffered position as listed by the petitioner, are generic and provide no meaningful description of the specific tasks that the beneficiary would perform for the petitioner on a daily basis. The same lack of specificity is found in the petitioner's response to the director's request for evidence, and in the information submitted on appeal.

The AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. In the present matter, the record fails to offer a detailed, meaningful description of the proffered position, or of the beneficiary's duties as they relate to the petitioner's business.

The AAO finds that the organizational structure, and financial and tax information contained in the record fail to establish that the proffered accounting position would require a degreed budget accountant.

¹ 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.

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 worker 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.

The petitioner indicated at the time of filing that it operates an insurance company, that it employs three employees, and that it has a gross annual revenue of \$750,000. The AAO has reviewed the petitioner's financial, tax and organizational structure evidence to determine whether the proffered employment described by the petitioner would impose a degree requirement on the beneficiary.

The Form I-129 indicates that the company had three employees and a gross income of \$750,000, as of September 2004. The petitioner's annual federal employment tax return indicates that the petitioner paid \$102,609 in wages in 2004, and had three employees as of December 31, 2004. The 2002 federal tax return indicates gross receipts of \$285,322. No evidence of record establishes the petitioner's stated gross income of \$750,000. The petitioner states that it represents the third largest insurer in the United States, Farmer's Insurance, yet no evidence of record establishes this relationship or describes the complexity of the financial transactions arising out of such representation. The petitioner describes the lines of insurance and financial services offered by Farmer's Insurance, but the evidence of record does not establish the duties of the proposed budget accountant position in relation to the petitioner's provision of services.

The evidence fails to verify that the petitioner has a four person staff, the job duties of the staff, or that the petitioner has a financial operations division. In spite of the petitioner's assertions on appeal, the present record contains no evidence to establish or indicate that the beneficiary would work with financial accounting employees or with an accounting department. The information contained in the record reflects that the petitioner's company employs only three employees and that the company has two independent, commission only employees. The record contains no information to reflect that the employees have financially related position titles or duties, and the record does not contain independent information relating to the employee or organizational structure of the petitioner's company.

Going on record without supporting documentation is not sufficient to meet 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)). Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the record lacks evidence to support the contention that the extent or complexity of the petitioner's financial operations establishes the need for an accountant with a level of knowledge that may only be obtained through a baccalaureate degree in accountancy.

Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. *See Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000).

The AAO finds that the petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a “[d]egree 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.” The record contains no parallel position or common industry evidence. The record also contains no information from a professional association in the petitioner’s industry, or letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position. Moreover, the relevant educational requirement information contained in the *Handbook* and as reflected on the ACAT website, indicates that, depending on the needs of the employer, the educational requirement for an accountant position ranges from an associate degree or certificate requirement, to a requirement for a bachelor’s degree in accounting or a related field. The petitioner has failed to provide evidence containing a detailed description of the job duties for the proffered position in relation to its business interests. Accordingly, the petitioner has failed to establish the company’s position needs, or the education level required to fill the position requirements.

The petitioner has additionally failed to establish that the proffered position qualifies as a specialty occupation under the third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), which states that, “the employer normally requires a degree or its equivalent for the position.” The petitioner stated on appeal that the proffered position is a new position. Accordingly, the record contains no evidence relating to the petitioner’s past hiring practices for the proffered position. The petitioner therefore failed to establish that the position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record also fails to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, “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.” As previously discussed, the description of the proffered position duties is too generic to determine the specific tasks that the beneficiary would perform on a daily basis. This generic description makes it impossible to assess whether the proffered position’s duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, as noted above, the *Handbook* and the information on the ACAT website reflects that an accountant position may require less than a baccalaureate degree in a specific field to perform the duties. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the record contains no evidence to establish any specialized and complex nature of those tasks. Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets any of the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed and the petition denied.

ORDER: The appeal is dismissed. The petition is denied.