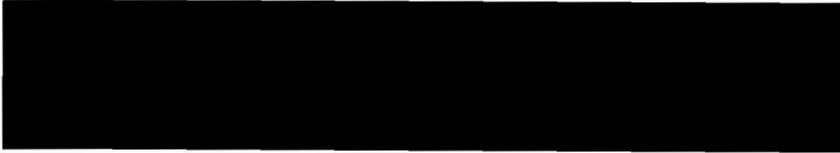


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U.S. Citizenship  
and Immigration  
Services

D2



FILE: WAC 04 154 53079 Office: CALIFORNIA SERVICE CENTER Date: FEB 23 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:

SELF-REPRESENTED

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 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 manufacturing company that seeks to employ the beneficiary as an accountant. 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 basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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.

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 proposed position.

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

The petitioner proposes to hire the beneficiary as an accountant. In the petitioner’s April 29, 2004 letter of support, the duties of the proposed position were set forth as follows:

This individual will prepare the payroll statements and deductions, monthly profit and loss reports, financial statements, and quarterly and yearly tax returns. She will direct the implementation of a general accounting system for keeping the company’s accounts, receivables, records of disbursements, expenses, tax payments and general ledgers. [The beneficiary] will prepare balance sheets reflecting the company’s assets, liabilities and capital. She will maintain the company’s accounting systems to determine its efficiency and protective values.

In his request for evidence, the director requested a more detailed description of the duties of the proposed position, including the percentage of time that the beneficiary would devote to each task. In its August 23, 2004 response, the petitioner stated that accounts payable duties would occupy 20 percent of the beneficiary’s time, accounts receivable responsibilities would occupy 30 percent of her time, payroll and HR administration would occupy 20 percent of her time, and “other management and confidential functions” would occupy the remaining 20 percent of her time.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

The AAO agrees that, as a general matter, positions requiring the services of a degreed accountant normally qualify for classification as specialty occupations. However, the AAO disagrees with counsel’s assertion that the position proposed here is that of an accountant.

In deciding whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It 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 minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

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 proposed position. The *Handbook* sets forth the following description of the duties of a management accountant:

*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 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* also states that, increasingly, accountants “not only provide clients with accounting and tax help, but also help them develop personal budgets, manage assets and investments, plan for retirement, and recognize and reduce their exposure to risks.”

By comparison, the *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization’s financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company’s books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable . . . 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 . . . .

*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 . . . .

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 . . . . The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. . . .

According to the *Handbook*, most bookkeeping, accounting, and auditing clerks are required to have the minimum of a high school degree. Although a two-year associate's degree in business or accounting may be required for some bookkeeping and accounting clerk positions, a four-year bachelor's degree is not required for entry-level employment. The *Handbook* does indicate that many individuals with four-year degrees accept bookkeeping and accounting clerk positions in order to enter the field or a particular company with the goal of being promoted to professional or managerial positions. The *Handbook* also indicates that many graduates of junior colleges and business and correspondence schools can obtain junior accounting positions.

The *Handbook* describes the occupation of a tax preparer as follows:

Prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant.

The *Handbook* indicates that the normal educational requirement for a tax preparer is "moderate-term on-the-job training."

A petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 or 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.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record in this case does not support the assertion that the duties of the proposed position require a bachelor's degree in accounting or a related specialty. While this 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

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

knowledge and a baccalaureate degree or its equivalent.<sup>2</sup> The scope of the proposed position lacks both the breadth and the depth of a management accounting position. Further, none of the duties described require the types of discretionary financial judgments that characterize the employment of degreed accountants.

Rather, the AAO concludes that the proposed position combines the duties of an experienced bookkeeping, accounting, or auditing clerk with those of a tax preparer. Most of the duties of the proposed position accord with the *Handbook's* description of bookkeeping, accounting, and auditing clerks and tax preparers. For example, the petitioner states that fully 60 percent of the beneficiary's time would be spent on accounts payable and receivable. According to the *Handbook*, these are accounting clerk functions. Another 20 percent of her time would be spent on payroll and human resources administration. According to the *Handbook*, payroll preparation is a function of a bookkeeping clerk. The duties that would occupy the remaining twenty percent of the beneficiary's time, including those related to the petitioner's taxes, also do not require a degreed accountant. For example, taxes may be prepared by tax preparers.

As already discussed, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, or auditing clerk positions, though some employers may require a two-year associate's degree in business or accounting. Neither are tax preparers required to possess degrees. Since the duties of the proposed position do not require a baccalaureate degree in accounting or a related specialty, the position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO will accord no weight to the information the petitioner submits from the *Dictionary of Occupational Titles (DOT)*, as the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. It provides an assessment (the S.V.P. rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been presented to support the contention that the proposed position qualifies for classification as a specialty occupation under this prong. Moreover, as noted previously, the AAO does not accept the contention that the proposed position is that of an accountant.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>2</sup> According to the website of Skyline College (<http://www.skylinecollege.net>), a community college located in San Mateo, California, an associate's degree in business or accounting would involve learning the fundamentals of financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the generally accepted accounting procedures (GAAP), forecasting, budgeting, cost accounting, break even analysis, 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. Thus, an associate's degree would provide knowledge about accounting techniques that would serve the needs of management and facilitate decision-making.

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as the duties of the proposed position are similar to those of bookkeepers, auditing clerks, accounting clerks, or tax preparers, and do not require a four-year degree.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no such evidence has been submitted to demonstrate that the proposed position qualifies under this criterion.

In order to establish eligibility under this criterion, a petitioner must demonstrate that it normally hires individuals with a bachelor's degree or its equivalent for the position. The petitioner has never before filled this position, which precludes approval under this criterion.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 in the specialty. As previously discussed, the AAO is not persuaded by the evidence of record, including the nature and scale of the petitioner's business operations, that the duties of the position exceed the occupational scope of an experienced bookkeeper, auditing clerk, accounting clerk, or tax preparer, positions that do not require specialized knowledge at a baccalaureate level. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial.

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.