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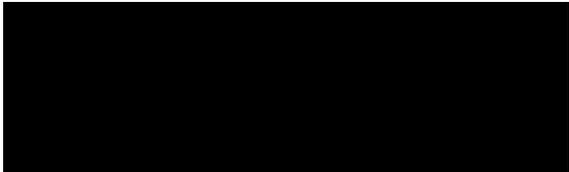
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FILE: WAC 04 127 51940 Office: CALIFORNIA SERVICE CENTER Date: JAN 13 2006

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 service center 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 an employment agency that seeks to employ the beneficiary as an accountant and to classify him 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 because the proposed position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 bachelor's degree or higher degree, but one in a specific field of study directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129 with supporting documentation and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part:

1. preparing cash flow and budgetary projections and monitoring cash expenditures to determine availability of funds and classification of expenditures (15%);

2. analyzing transactions to resolve budget problems, providing analyses of available funds upon the request of management (15%);
3. analyzing and compiling financial information to prepare entries to accounts documenting business transactions and maintaining the company general ledger and chart of accounts (15%);
4. summarizing and interpreting current and projected company financial position, detailing the company's assets, liabilities, and capital, and preparing balance sheet, profit and loss statement, and other financial reports (15%);
5. maintaining and updating the company's cost accounting system and evaluating financial performance and cost efficiency and assets management;
6. analyzing cost information from manufacturing work orders – researching variances, closing all manufacturing work orders, and preparing monthly balance sheet account reconciliation (15%); and
7. establishing, modifying, and documenting implementation of accounting control procedures (15%).

The director asked the petitioner to submit the following evidence to support the assertion that the proposed position was a specialty occupation: evidence that the position is a specialty occupation; a detailed description of duties, including the percentage of time to be spent on each duty; the job posting for the proposed position; and other business-related documents.

In response, the petitioner provided a more detailed job description with a percentage breakdown of the time to be spent on each duty, the job announcement, the excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* for accountants, a copy of *Matter of Doultsinos*, five job announcements from different business entities, an organizational chart, the petitioner's state and city business licenses, six of the beneficiary's pay slips, and a copy of the petitioner's tax registration certificate.

The director concluded that the petitioner failed to establish that it has the organizational complexity to justify the need for an accountant and that the particular duties of the proposed position resembled those of a bookkeeping, accounting, or auditing clerk and not an accountant.

On appeal, counsel asserts that the proposed position is that of an accountant, not a bookkeeper.

Upon review of the record, the AAO concludes that the petitioner has failed to establish that its accounting position meets any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

To determine 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 highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As the petitioner has identified its proposed position as that of an accountant, the AAO turns first to the *Handbook's* discussion of this occupation. According to the *Handbook*, accounting duties vary widely among four major fields of accounting: public, management, government, and internal. The closest category to the proposed position is that of management accountants, who:

[r]ecord and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, 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.

Based on the above discussion, the AAO does not find the petitioner's general description of the duties of the proposed position to reflect the scope or complexity of the work of accountants. The *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree in accounting or a related field. While it agrees that the duties of the proposed position, as described, indicate that the beneficiary would require some knowledge of accounting principles, these duties do not establish the position as that of an accountant. The decisive question is not whether the position requires knowledge of accounting principles – which it clearly does – but whether it normally requires the level of accounting knowledge that is acquired by at least a bachelor's degree, or its equivalent, in accounting. In the instant case, the duties of the proposed position – the analysis of information to prepare account entries; the preparation of financial reports, the maintaining of records of assets, liabilities, profits, losses and tax liabilities; the preparation of balance sheets, and profit and loss statements; and the analysis of cost information from manufacturing work orders – appear to be more closely aligned with the accounting responsibilities performed by full-charge bookkeepers or bookkeeping and accounting clerks.

The work of bookkeeping, accounting, and auditing clerks is described in the *Handbook* in the following way:

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 have 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.

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.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billings vouchers; ensure 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.

Based on the record before it, the AAO finds the duties of the proposed position, including the reporting responsibilities identified by the petitioner, fall within the typical employment of a full-charge bookkeeper, who in addition to serving as businesses' financial record keepers, may also be responsible for the development of financial statements, as well as the preparation of the type of financial reports and summaries described by the petitioner. The AAO notes that the *Handbook* states that full-charge bookkeepers are called upon to "do much of the work of accountants." Therefore, the proposed position is that of a full-charge bookkeeper.

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The *Handbook* states the following regarding the education and experience requirements imposed on those who seek employment as bookkeepers and accounting clerks:

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 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.

The *Handbook* further states the following regarding job opportunities for full-charge bookkeepers:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The *Handbook's* subsection "Sources of Additional Information" (page 74) refers the reader to the Internet site for the American 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."

Individuals can work as bookkeepers with either a two-year associate's degree, four-year bachelor's degree, and even with a high school diploma. The petitioner failed to establish that a bachelor's degree in accounting or a related field is normally the minimum requirement for entry into the proposed position. As entry-level employment for bookkeepers may be obtained without a bachelor's degree or its equivalent, the proposed position does not qualify as a specialty occupation under at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) - a degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn.

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."

1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The five Internet job announcements the petitioner submitted do not support counsel's assertion that a bachelor's degree in accounting is an industry standard for similar positions. First, none of the announcements were for jobs at other employment and staffing agencies, but at a variety of unrelated businesses including an engineering firm, a provider of prepaid charge cards, and the entertainment, restaurant, and real estate industry. Second, while the announcements for some of the accounting positions reflected that they might be specialty occupations, they do not support counsel's assertion that the proposed position is an accountant position. The petitioner has not established that the requirement of a bachelor's degree in accounting is common to the industry in parallel positions among similar-sized employment and staffing agencies. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor's degree or its equivalent for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has not submitted evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the position, the petitioner has not established that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). 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)).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position – the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO has again reviewed the duties listed by the petitioner. There is no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by full-charge bookkeepers who routinely work in demanding and complex businesses. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a full-charge bookkeeper. Counsel asserts that the proposed duties are “so complex and sophisticated that a bachelor's degree in [a]ccounting or a related field is imperative for anyone who seeks to hold the same.” Counsel did not submit any documentary evidence to establish that these duties bring a particular complexity or uniqueness to the position requiring a bachelor's degree in accounting. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *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).

The petitioner states on the form I-129 that it has a gross annual income of \$1.5 million and employs 10 people, but does not submit any documentary evidence in support of these assertions, such as tax returns or employee wage records. 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)).

In addition, counsel's assertions that the proposed duties are complex is vague and repetitious. Counsel asserts that the beneficiary would “perform sophisticated functions” such as “analysis, study, exposition, and in-depth exploration of different information affecting the business.” He failed, however, to tie the proposed duties to specific aspects of the petitioner's business. Therefore, the petitioner has not established that the proposed position is a specialty occupation based upon the complexity or uniqueness of its duties.

As related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.