

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



D2

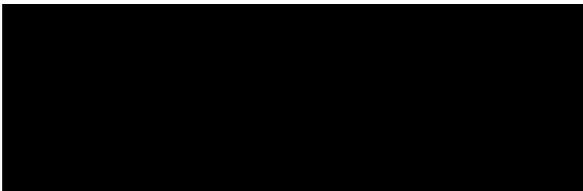
FILE: WAC 04 261 50743 Office: CALIFORNIA SERVICE CENTER Date: **JUN 07 2006**

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 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 a specialty food store 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 on the basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 bachelor's 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) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B with brief and supporting documentation. 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 attachments and company support letter and the petitioner's response to the RFE. According to this evidence, the beneficiary's duties would include:

- Managing the monthly and year-end financial reports such as preparation of financial statements (balance sheet and income statement), cash flow statement, and supporting schedules in accordance with the generally accepted accounting procedures (GAAP) and federal accounting standards advisory board (FASAB), 30%;
- Analyzing and interpreting financial reports, variances. Preparing accruals and adjustments as needed of all financial statements, profit and loss statements, cash flow and analysis, etc. 15%;
- Examining and reviewing the accuracy of accounting classifications, transactions, and records such as cash receipts and disbursements, 5%;
- Overseeing the calculation of wages, overtime, and deductions to ensure compliance with federal and state laws. Ensuring that A941 payments and quarterly wage reports are disbursed timely. Maintaining strict confidentiality of this data, 5%;
- Setting up and maintaining an automated accounting system and records using financial software applications such as SAMS 650 Inventory Control System, Microsoft Word, Excel, Access, and Quickbooks Pro 2004, 10%;
- Completing professional tax accounting activities of the corporation. Ensuring timely payment of quarterly sales tax, permits, license fees, and modified business taxes, 10%;
- Overseeing, managing, and supervising the entry of data into the various ledgers and records performed by the clerical/data entry clerk under the direct and immediate supervision of the accountant, 10%;
- Recommending methods, operational procedures and modifications to improve the functioning of all financial systems, 8%; and
- Performing related duties as assigned, 2%.

The petitioner stated that the proposed position requires a bachelor's degree in accounting, or a related field.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* is misplaced. The director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director discussed the *Handbook's* description of accountants, and stated that the petitioner does not have the organizational complexity, scale of business, or engage in the type of business to require the services of a part or full-time accountant. The director also found that the proposed duties more closely resembled those of a bookkeeper, not an accountant. The director stated that since the petitioner did not employ financial clerks, which is an occupation that does not qualify as a specialty occupation, the beneficiary would perform these duties. The director stated that the evidence is insufficient to show that the proposed duties could not be performed by an experienced person whose educational training falls short of a bachelor's degree. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director erred in finding that the petitioner did not employ financial clerks because the record clearly shows that the petitioner employs an accounting clerk. Counsel asserts that the

beneficiary will only be engaged in high-level accounting work. Counsel asserts that the director should have looked at the DOL's *O*Net*. Counsel asserts that the director's finding that the petitioner does not possess the organizational complexity to justify the need for an accountant is unsubstantiated. Counsel asserts that the director erred in reclassifying the position from an accountant to a bookkeeper. Counsel asserts that the proposed position is a specialty occupation because the beneficiary's duties are similar to those of an accountant as described in the *Handbook*. Counsel emphasizes that the beneficiary's duties are similar to an accountant because the beneficiary will analyze and interpret financial information, and prepare financial reports. Counsel states that a bookkeeper's duties are limited to financial recordkeeping; an accountant's are broader in scope, entailing analysis and interpretation of financial records to prepare financial reports.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has failed to establish that the proposed position meets any of the four criteria outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

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 that the petitioner's general description of the duties of the proposed position reflects the scope or complexity of a position that requires at least a bachelor's degree in accounting or a related specialty. 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 that the position requires a bachelor's degree level of knowledge in the field. The decisive question is not whether the position requires knowledge of accounting principles – which it does – but whether it is one that requires the level of accounting knowledge that is acquired by at least a bachelor's degree, or its equivalent, in accounting. Many of the duties described in the above passage in the *Handbook* do not apply to the proposed position, such as strategic planning or new product development. The complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Counsel asserts that just because the beneficiary is not part of a formal accounting department or team does not disprove his responsibilities as an accountant, but did not submit documentation to establish these responsibilities, e.g.

examples of the accounting work he has performed for the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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).

To the extent that they are described in the record, the duties of the proposed position – which include managing monthly and yearly financial reports – more closely resemble the accounting responsibilities performed by bookkeepers and other financial clerks or a junior accountant. 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 petitioner stated that the beneficiary will manage the monthly and year-end financial reports such as balance sheet, income, and cash flow statements; analyze and interpret financial reports; and examine and review the accuracy of the cash receipts and disbursements. These duties are performed by bookkeeping, accounting, and auditing clerks who, according to the *Handbook*, update and maintain accounting records that tabulate profit and loss reports, verify records of transactions, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll. The *Handbook* notes the growing use of financial software to enter and manipulate data. The AAO notes that the *Handbook* states that full-charge bookkeepers are called upon to “do much of the work of accountants.”

To determine whether the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) - 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 AAO turns to the 2006-'07 *Handbook's* discussion of the educational requirements for individuals in this field. Counsel relies on the DOL's *Occupational Information Network (O*Net)*. The *O*Net* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*Net* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. This resource does not describe the amount of training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on *O*Net* information. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. The *Handbook* states the following regarding the education and experience requirements imposed on those who seek these jobs:

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.¹

¹ According to the website for Skyline College, a community college located in San Mateo, CA (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the American 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.²

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.

Thus, individuals can do accounting work as bookkeepers or junior accountants with either associate’s degrees, bachelor’s degrees, or with relevant work experience in the field. The petitioner failed to establish that the proposed position exceeds these job levels. Since individuals with two and four-year degrees and even those with high school diplomas who gain accounting skills and perform well can work at these jobs, the petitioner has failed to establish that the proposed position is a specialty occupation under 8 C.F.R. § 14.2(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. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The job announcements submitted with the RFE either do not describe the duties of the announced positions with sufficient particularity to determine if they are similar to the proposed position, or are from companies dissimilar to the petitioner, a specialty food store with about 5 employees. 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).

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. Thus, an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

² 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.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a bachelor’s degree or its equivalent for the proposed 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. This criterion is not a factor in this proceeding as the petitioner states that this is a newly created position. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor’s degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish 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 bachelor’s or higher degree in a specific field of study. The duties, as listed by the petitioner, appear to be typical of a full-charge bookkeeper or junior accountant position. On appeal, the petitioner asserts that the “the duties of this position are of a complex nature and require any person who performs these duties to not only do the accounting duties but also” to review and analyze all financial and inventory control reports. The petitioner has not submitted any documentary evidence to establish that the proposed duties bring a uniqueness, complexity, or specialization to the position that requires or is usually associated with a bachelor’s degree in accounting. 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)). 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 will 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.