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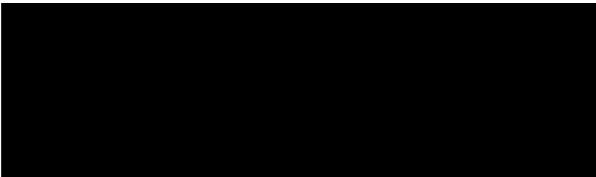
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FILE: WAC 03 077 50621 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion to reopen/reconsider will be granted. The appeal will be dismissed. The petition will be denied.

The petitioner is a residential care home. It reports that it has 12 employees and a gross annual income of \$600,000. It seeks to employ the beneficiary as an accountant. It endeavors to classify her 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 ground that the proffered position does not qualify as a specialty occupation. The AAO summarily dismissed the petitioner's appeal by decision dated July 2, 2004, on the ground that the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact upon which the appeal was based. The petitioner then filed a motion to reopen/reconsider stating that it had filed with Citizenship and Immigration Services (CIS) a brief in support of its appeal detailing the basis of the appeal.

As noted above, the record establishes that the AAO dismissed the petitioner's appeal on July 2, 2004. Documentation submitted by the petitioner in support of the present motion establishes that it filed with CIS a brief in support of its appeal on or about September 26, 2003. The AAO's determination dated July 2, 2004 is accordingly withdrawn, and the merits of the petitioner's appeal shall be considered.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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.

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.

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.

The record of proceeding before the AAO contains: (1) the 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) the Form I-290B with 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 supporting documentation and the petitioner’s response to the director’s request for evidence. According to the evidence the beneficiary would:

- Prepare, analyze and verify the quarterly and yearly tax returns, perform audits, prepare payroll statements and deductions, monthly expense reports and financial statements;
- Be responsible for the company’s general ledger, monthly and yearly financial reports, monitoring of information systems, and compiling and analyzing financial information for entries into accounts;
- Detail company assets, liabilities, and capital;
- Prepare the company’s balance sheets, profit and loss statements, necessary checks, tax remittances and other reports to summarize the company’s current and projected financial position;

- Monitor the company's budgeting, performance evaluation, cost and asset management;
- Review company finances and devise a long range tax plan;
- Advise and recommend tax strategies, including advantages and disadvantages of certain business decisions or transactions;
- Devise a financial system that will help the company establish a more systematic inventory control procedure;
- Modify and coordinate the implementation of accounting and accounting control procedures; and
- Analyze transactions and prepare billing statements, and prepare the company's letter correspondence with existing and prospective clients and other professionals regarding transactions, financing and billing statements.

The petitioner finds the beneficiary qualified for the proffered position by virtue of her foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in accounting from an accredited college in the United States.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In his denial, the director found the duties described by the petitioner were similar to those performed by bookkeeping, accounting and auditing clerks, and were not of the complexity or scope of responsibility normally required of an accountant. He further concluded that as the petitioner's organizational chart included no bookkeeping or accounting clerk positions, the duties would be performed by the beneficiary. However, the fact that the petitioner does not have an accounting/bookkeeping staff does not establish that it would not employ the beneficiary to perform the duties of an accountant. Therefore, the AAO withdraws the director's findings in this regard.

The petitioner has stated that the proffered position is that of an 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 management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord 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 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.¹

The AAO finds the above discussion to be generally reflective of a portion of the petitioner's job duties and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish the proffered position would impose a degree requirement on the beneficiary. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates 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.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

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.²

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

¹ *Ibid.*

² *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

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.³

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate’s degree in accounting,⁴ the AAO turns to the record for information regarding the nature of the petitioner’s business operations. While the size of a petitioner’s business is normally not a factor in determining the nature of a proffered position, both its level of income and the extent of its business operations 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, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or 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 AAO has reviewed the record for a discussion of the petitioner’s business operations, as identified on its organizational chart, to understand the financial requirements and their relation to the beneficiary’s duties. The record does not establish that the duties of the proffered position are sufficiently complex to indicate that the petitioner would employ the beneficiary as a management accountant. Instead, as listed, they appear more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. The evidence submitted by the petitioner does not describe its financial operations and how those operations support its business. The AAO is aware that regulatory requirements in the healthcare industry may create unique financial requirements for the petitioner. The petitioner, however, has failed to submit evidence of these regulatory requirements and how they specifically affect its business operations. While counsel’s response to the director’s request for evidence states that the petitioner’s accounts are numerous and complex, it provides no evidence in support of the statement except for the petitioner’s statement, which is also not supported by financial records evidencing the number and nature of its financial accounts. The petitioner states that it is experiencing rapid growth, and as a result it needs the services of an accountant to organize and maintain its

³ 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.

⁴According 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 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.

accounts. Again, the petitioner has submitted no evidence establishing that its business is going through a period of rapid growth or expansion. Finally, counsel states in his response to the director's request for evidence (and petitioner states in its letter of December 19, 2002) that the petitioner operates three separate healthcare facilities and that the beneficiary would provide accounting services for all three facilities. The record does not contain evidence establishing that three facilities actually exist, or the nature of the accounting services required of the beneficiary at each facility. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Counsel states in his brief that the offered position is that of an accountant, and that according to the *Handbook's* discussion of the degree requirement for the occupation of accountants, it is established that the proffered position is a specialty occupation. The AAO does not agree.

The proffered position is not that of a management accountant, but a junior accountant, employment that the *Handbook* indicates may be performed by individuals who have associate's degrees in accounting or who have an appropriate level of experience. Accordingly, the proffered position may not be established as a specialty occupation under the first prong of the second criterion based on the *Handbook's* discussion of the standard degree requirement for management, public and government accountants. As the petitioner has submitted no evidence to prove that its degree requirement for the proffered position is common in parallel positions among similar organizations, it has failed to establish the proffered position as a specialty occupation based on the practices in its industry.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence that would support such a finding. Nor has the petitioner provided sufficient evidence to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. In the instant case, the petitioner has submitted no evidence regarding its hiring practices. Accordingly, the record does not establish the proffered position as a specialty requirement under the third criterion. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants, employment that the *Handbook* reports does not impose a degree requirement. 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 other than those of a junior accountant. The petitioner indicates that the Department of Labor's *Dictionary of Occupational Titles (DOT)* awards the position of accountant an SVP rating of eight, which indicates that the position requires 4 – 10 years of education and experience and therefore requires a minimum of a bachelor's degree. As stated above, the duties of the present position are not those of a management accountant requiring a baccalaureate level education, but those of a junior accountant. Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.