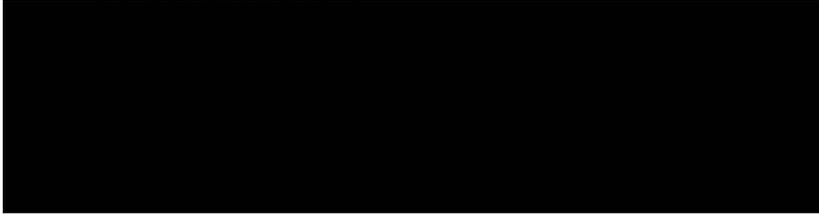


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FILE: WAC 04 119 50303 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Director
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 imports and sells aftermarket cellular phone parts and accessory products. It seeks to employ the beneficiary as a financial analyst/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, finding that the proposed position did not qualify as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B. The AAO has reviewed the entire record of proceeding in making its determination as to whether the proposed 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.

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 proffered position.

Evidence of the beneficiary's proposed duties as a financial analyst/accountant includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary will oversee accounts receivables and accounts payables; analyze financial information detailing assets, liabilities, and capital; prepare the balance sheet and profit and loss statement to summarize the petitioner's current and projected financial position; analyze the petitioner's present and past operations records, trends and costs, estimated and realized revenues, administrative commitments, and obligations in order to project future revenues and expenses; develop and maintain budgeting systems that control expenditures such as advertising and marketing, maintenance and repairs, and employee salaries and benefits; establish, document, coordinate, and implement accounting and accounting control procedures; advise management of the impact of business and internal programs and activities on taxes; ensure compliance with federal and state regulations; devise and implement computer-based systems for general accounting; examine and analyze the petitioner's accounting records and prepare federal, state, and local income tax returns; and formulate policies and procedures governing the financial relationship with banks, distributors, suppliers, and customers. For the proposed position, the petitioner requires a baccalaureate degree in accounting, finance, or a related business discipline.

In the denial letter, 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* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, 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 stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation, and that incidental specialty occupation duties do not establish a position as a specialty occupation. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity, scale or complexity of business, or engage in the type of business to require the services of a full-time accountant for any significant length of time. The director found that the petitioner does not employ financial clerks, positions that are not specialty occupations, and that although the proposed position requires some financial analysis the actual duties to be performed by the beneficiary are more closely related to those of financial clerks. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director concluded that the petitioner failed to establish one of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the field of aftermarket cellular phone accessories/parts products is highly competitive and has new products. Counsel maintains that the petitioner is a young company, is at a critical development stage, and is expanding and hiring employees. Counsel states that the petitioner has employees that handle bookkeeping and accounting work, and describes the proposed duties.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* 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)).

In determining 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 a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In the denial, the director stated that the petitioner is not in the kind of industry that typically employs an accountant. The AAO does not agree with the director's conclusions regarding the industries or the size of company in need of accountants. The 2006-2007 edition of the *Handbook* indicates that an accountant position can be found "throughout private industry" and the *Handbook* does not suggest that a company employing an accountant must be of a particular size. Notwithstanding this, the AAO does not find that the proposed position resembles that of an accountant.

On appeal, counsel asserts that the proposed duties resemble those of an accountant, particularly a management accountant. The *Handbook*, a resource that the AAO routinely consults about the duties and educational requirements of particular occupations, portrays a management accountant as follows:

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.

An accountant is a specialty occupation, normally requiring at least a bachelor's degree in accounting or a related discipline. Although counsel states that the proposed duties parallel those of an accountant, the evidence in the record does not support this. In the March 15, 2004 letter, the petitioner states it is a subsidiary of an overseas company, and that its primary function is to sell and distribute cellular phone

accessories/parts products that have been purchased from the parent company. The submitted invoices reflect that the petitioner primarily sells cell phone holsters to distributors, and the Form I-129 petition shows that the petitioner has five employees and gross annual sales of \$700,000. This evidence does not establish the complexity of business operations or financial transactions, or the handling of many accounts, that would require a four-year degree in accounting. The *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation 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."³ Buying various kinds of cell phone holsters, which are purchased directly from the parent company, do not suggest a complexity of business operations or financial transactions that would require the services of a financial analyst/accountant. The level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's duties. Responsibility for income of \$700,000 differs vastly from responsibility associated with a far larger income. The AAO notes that the *Handbook* reports that tax returns for small businesses are prepared by tax preparers, which is an occupation that requires moderate-term on-the-job training. Based on the evidence submitted, the AAO finds that the proposed duties are distinguishable from those of a management accountant.

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."

³ The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that 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 generally accepted accounting principles (GAAP), forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

For the reasons discussed above, the petitioner fails to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submitted no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed under 8 C.F.R. § 214.2(h)(iii)(A)(1), based on the evidence submitted, the proposed duties differ from those of a management accountant, which is a position that qualifies as a specialty occupation. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

There is no evidence demonstrating that the petitioner normally requires a degree or its equivalent for the position, the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), the evidence does not support counsel's assertion that the proposed position reflects that of an accountant. Therefore, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered 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.