

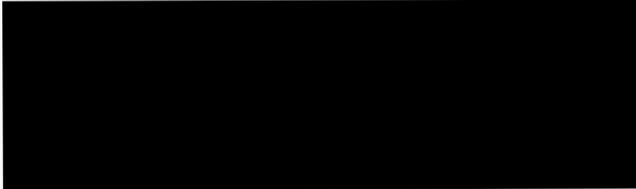
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U.S. Citizenship
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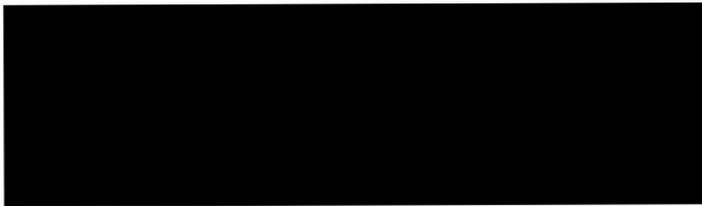
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FILE: WAC 04 239 52063 Office: CALIFORNIA SERVICE CENTER Date: **MAR 27 2006**

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner engages in the importation and wholesale of exotic spices common to Indian, Middle Eastern and Asian cuisine. It desires to employ the beneficiary temporarily in the United States as an in-house accountant, at \$36,500 per year, for three years. The director determined that the proffered position did not meet any of the criteria for classification as a specialty occupation and denied the petition.

On appeal, counsel states that the petitioner has submitted ample evidence to describe the duties and responsibilities of the position. Counsel also states that these duties and responsibilities are consistent with the position of a management or in-house accountant.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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) interpret 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.

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

The petitioner is seeking the beneficiary’s services as an in-house accountant. In determining whether a position qualifies as a “specialty occupation” for purposes of nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The Petition for a Nonimmigrant Worker (Form I-129) was filed on August 27, 2004. On September 2, 2004, CIS requested the petitioner to provide a more detailed description of the beneficiary’s specific job duties. In its response dated September 28, 2004, counsel for the petitioner submitted an explanation of the beneficiary’s proposed duties. Counsel states that 40 percent of the beneficiary’s time will be devoted to execution of plans, such as designing and implementing various control procedures which would be helpful in establishing an efficient accounting department; preparing and finalizing the company’s monthly and annual financial statements for management; directing the personnel in the accounts department; submitting the company’s annual tax return; day-to-day accounting of the company’s business transactions; managing the accounts receivable and payable; preparing the daily cash flow position, product pricing index and issuing sales invoices, debit or credit notes. Counsel states that 20 percent of the beneficiary’s time will be spent on planning, such as, preparing the monthly and annual budget, variances and marketing reports and various forecasts; planning of stock, overseas and funds procurement and procurement from the local market; preparing the annual audit plan with the help of external auditors and preparing various business strategies. Counsel also states that 10 percent of the beneficiary’s time will be spent on controls, such as analyzing and controlling credit terms and expenses; designing and developing a system of checks and balances; appraising various progress reports and maintaining a healthy cash flow and working capital. Counsel also states that the other 30 percent of the beneficiary’s time will be spent on other functions including human resources, IT development and its implementation, corporate and other statutory requirements, negotiating terms with lenders and bankers, hiring and firing staff working in the accounts department, formulating and executing advertising and marketing or promotional campaigns and maintaining internal and external relationships.

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).

The AAO turns first 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; 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Counsel states, in his brief in support of the appeal, that the definition of management accountants listed in the *Handbook* is consistent with the position offered to the beneficiary.

According to the *Handbook*, 2006-07 edition, there are four major fields of accounting: public, management, government, and internal auditors. The *Handbook*, 2006-07 edition, reveals that the specific job duties vary widely among the four major fields and confirms that the proffered position is not that of an accountant. The *Handbook*, 2006-07 edition, sets forth the following descriptions of the duties of the four major fields of accounting:

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.

Government accountants and auditors work in the public sector, maintaining and examining the records of government agencies and auditing private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by Federal, State, and local governments guarantee that revenues are received and expenditures are made in accordance with laws and regulations. Those who are employed by the Federal Government may work as Internal Revenue Service agents or in financial management, financial institution examination, or budget analysis and administration.

Public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their clients, who may be corporations, governments, nonprofit organizations, or individuals. For example, some public accountants concentrate on tax matters, such as advising companies of

the tax advantages and disadvantages of certain business decisions and preparing individual income tax returns. Others offer advice in areas such as compensation or employee healthcare benefits, the design of accounting and data-processing systems, and the selection of controls to safeguard assets. Still others audit clients' financial statements and report to investors and authorities that the statements have been correctly prepared and reported. Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Some public accountants specialize in forensic accounting – investigating and interpreting white-collar crimes such as securities fraud and embezzlement, bankruptcies and contract disputes, and other complex and possibly criminal financial transactions, including money laundering by organized criminals. Forensic accountants combine their knowledge of accounting and finance with law and investigative techniques in order to determine whether an activity is illegal. Many forensic accountants work closely with law enforcement personnel and lawyers during investigations and often appear as expert witnesses during trials.

In response to recent accounting scandals, new Federal legislation restricts the nonauditing services that public accountants can provide to clients. If an accounting firm audits a client's financial statements, that same firm cannot provide advice on human resources, technology, investment banking, or legal matters, although accountants may still advise on tax issues, such as establishing a tax shelter. Accountants may still advise other clients in these areas or may provide advice within their own firm.

Internal auditors verify the accuracy of their organization's internal records and check mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations-evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations. There are many of highly specialized auditors, such as electronic data-processing, environmental, engineering, legal, insurance premium, bank, and healthcare auditors. As computer systems make information timelier, internal auditors help managers to base their decisions on actual data, rather than personal observation. Internal auditors also may recommend controls for their organization's computer system to ensure the reliability of the system and the integrity of the data.

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 exposure to risks.”

Upon review of the beneficiary's job description on Form I-129 and the duties listed in the response to the director's request for evidence, the AAO finds that the evidence of record does not convey any details about the financial information the beneficiary will be in charge of managing and analyzing for the petitioning entity, and the level of accounting knowledge required to address these matters. For instance, there is no documentary evidence or information about the specific nature of the petitioner's operations, the complexity involved in overseeing and managing the accounts payables and receivable departments, the types and volume of transactions, the kinds of presentations and/or reports the beneficiary is required to make, the nature of the petitioner's financial reports and/or statements, the spectrum of costs to be managed and audited, the extent of the petitioner's financial dealings, the range of the petitioner's financial records, the specific types of data which the beneficiary would analyze, the size of the petitioner's budget, the number of the

petitioner's budget elements, or the nature of the budget/expenses variance issues and trends. Therefore, there is no factual basis for the AAO to determine the proffered position is one that normally would require at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

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."

Many of the duties listed under each specialized field of an accountant and described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities.

The petitioning entity's organization chart shows four employees, the president and CEO, a secretary, the proffered position and a business manager of a branch office shown to be located in the mid-west. Form I-129 indicates that the petitioning entity has three employees. The petitioning entity's 2003 U.S. Corporation Income Tax Return indicates \$19,200 was paid to the president and CEO and \$31,212 was paid in salaries and wages. The tax return shows that no expenses were paid to outside labor. The 2003 tax return reflects \$1,037,755 in gross income.

Counsel states that with the petitioning entity's expansion of soon to be three business locations, the petitioner made a business decision to employ an in-house accountant to assume responsibility for and coordinate all financial matters. However, there is no documentary evidence to support counsel's assertions of an established branch located in Ohio, an accounting department in the California office, or that the petitioner plans to open a branch in Florida or another Southern state. 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)).

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."

Based on the evidence of record, the scope and complexity of the beneficiary's duties do not rise to the level of an accountant. Accordingly, the petitioner has not established that the proffered position requires at least a baccalaureate degree or higher degree, or its equivalent in a specific field of study for entry into the occupation.

While the size of the petitioner is generally not a factor in determining whether a position is a specialty occupation, the petitioner's level of income, number of employees, complexity and volume of business transactions have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Absent evidence of some of these factors, the petitioner has not shown that the proffered duties are so complex and specialized that the position requires a person with at least a baccalaureate level of education to perform the tasks. The petitioner does not demonstrate that the beneficiary would apply at least a baccalaureate level of highly specialized accounting knowledge in order to perform these duties. The duties of the proposed position do not rise to the level of those of an accountant. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record does not include any submissions from firms, individuals, or a professional association in the petitioner's industry attesting to the petitioner's recruitment and hiring practices. Consequently, the petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, the petitioner has not established that the position is a specialty occupation under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The evidence of record does not establish that the position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty.

The petitioner does not assert that it normally requires an individual with a degree in a specific specialty for entry into the proffered position, and offers no evidence concerning the petitioner's past hiring history with regards to this position. Counsel states on appeal that the financial matters associated with the petitioning entity were primarily handled by the president, with use of outside accounting firms prior to making the decision to employ an in-house accountant. Consequently, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the duties of the proffered position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not demonstrated with documentary evidence its expansion plans that include an in-house commercial department, the establishment of a fully computerized accounting department, stores, and a warehousing and marketing department. The petitioner has not shown that the financial matters associated with its business have expanded and the petitioning entity has two, and soon to be three, business locations which requires, due to the complex nature of the position, an accountant that possesses a bachelor's degree in accounting or a related field. No evidence to support these assertions has been presented. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner lists incidental duties such as human resources and marketing. The *Handbook* does not establish that either human resources managers or marketing managers require a degree in a specialty. Thus, these incidental duties do not establish the position as a specialty occupation.

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.