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U.S. Citizenship  
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Services

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FILE: WAC 04 176 52221

Office: CALIFORNIA SERVICE CENTER

Date: MAY 09 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 California 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 real estate company that seeks to employ the beneficiary as an 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 the offered position is not a specialty occupation. Counsel submitted a timely appeal and brief.

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 counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

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.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129 petition and the petitioner’s May 19, 2004 and October 28, 2004 letters. As described by the petitioner, the proffered duties are as follows: take responsibility in the preparation of financial statement, balance sheet, and profit and loss statement; compile and analyze financial information to prepare entries to accounts such as the general ledger account to document business transactions in accordance with generally accepted accounting principles (GAAP); prepare budgetary projections which include costing and appropriation; prepare cash flow and schedule of payments, monitor the aging of receivables, and oversee the preparation of banking documents such as the letter of credit; engage in external control procedures; institute checks and balances, and examine expenses, assets and liabilities; audit sales vouchers, job orders, and delivery receipts, and develop an accounting software to simplify operations and to easily monitor daily financial transactions, sales, and collections; implement sound accounting systems and procedures to ensure compliance with GAAP and in adherence to the company’s policies. The petitioner’s response to the request for evidence (the October 28, 1994 letter) elaborated on the proposed duties and included additional duties. The petitioner asserts that it requires a bachelor’s degree in accounting or its equivalent for the offered position.

To determine whether the proposed position qualifies as 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)).

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.

The AAO concurs with the director in that the petitioner’s response to the request for evidence expanded on the beneficiary’s duties and added new responsibilities such as: “[e]ngage in strategic planning”; “[p]repare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities”; “conduct company performance evaluations, cost management, and asset management”; “[d]evelop and implement quality procedures over critical finance processes (working capital improvement,

reporting processes, transaction processing routines and internal control(s), as well as audit reports”; “[l]ead controllership initiatives in areas such as account reconciliations, cash flow maximization from proper management of receivables and inventory.”

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner in its response to the director's request for further evidence clarified and provided more specificity to the original duties of the position, but it also added new duties to the job description. Therefore, the analysis of whether the proposed duties qualify as those of a specialty occupation will be based on the job description submitted with the initial petition.

The AAO acknowledges that a position involving some non-specialty-occupation duties does not preclude the position from being a specialty occupation. A position may require a baccalaureate degree or its equivalent in accounting or a related field even if some of its duties, such as bookkeeping or clerical tasks, do not. The *Handbook*, a resource that the AAO routinely consults, does not suggest that a particular kind of business would not need an accountant, or that a business must have a certain organizational structure in order to substantiate the need for an accountant. Thus, the AAO does not concur with the director's conclusions in these areas. Further, the AAO does not consider salary as a factor when considering whether a position qualifies as a specialty occupation.

Counsel asserts that the proffered position is that of an accountant. To determine whether the duties of the proffered position are those of an accountant, 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.<sup>1</sup>

The AAO finds the above description to be generally reflected in the petitioner's depiction of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

understanding of accounting principles. Because not all accounting employment is performed by degreed accountants, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. 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.<sup>2</sup>

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.<sup>3</sup>

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,<sup>4</sup> the AAO turns to the record for

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*Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

<sup>3</sup> 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.

<sup>4</sup> According to the website for Skyline College, a community college located in San Mateo, CA ([www.skylinecollege.net](http://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.

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 level of income and organizational structure 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, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient 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.

With the present case, the Form I-129 petition reflects that the petitioner has six employees, and earned gross annual income of \$2,785,223. The list of employees indicates the petitioner employs a president, vice president, director of marketing, controller, office manager, secretary/receptionist, office assistant, accountant (the beneficiary), accounting clerk, systems analyst, and two data encoders. The petitioner has a vacancy for a transportation manager. The organizational chart depicts the systems analyst, data encoders, and accounts clerk as beneath the accountant. The document entitled "Non-Employee Compensation, 1099 Summary for January 1 through October 12, 2004" lists the names of 18 sales agents, a controller/contractor (who is also shown as an employee), and a marketing manager/contractor (who is also listed as an employee). The petitioner submitted the quarterly taxable wages for the quarters in 2004 and 2003.

Although the submitted evidence is relevant in determining whether the proposed position is that of an accountant, the AAO notes that the record lacks evidence of the financial records and budgetary projections that the beneficiary will prepare; the expenses, assets, and liabilities that the beneficiary will examine; the sales vouchers, job orders, and delivery receipts; the letters of credit; and the cash flow and schedule of payments. Essentially, the record is devoid of financial documents that illustrate the scope or depth of the petitioner's financial transactions and operations. Without such evidence, the AAO cannot determine whether the proposed position would require the level of accounting knowledge that is attained through a baccalaureate degree in accountancy. 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)). Consequently, the petitioner failed to demonstrate a factual basis in which to establish that the offered position is one that normally would require at least a bachelor's degree (or its equivalent) in accounting or a related specialty.

On appeal, counsel states that "[a]n increase in business transactions has necessitated the hiring of an experienced accountant." The AAO finds that the record contains no evidence to establish counsel's assertion that the petitioner is experiencing an increase in business transactions. 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).

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Based on the submitted evidence, the petitioner has failed to demonstrate that its financial operations are of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of accounting knowledge that may only be obtained through a baccalaureate degree in accountancy. Accordingly, the duties of the proffered position are not established as those of a degreed accountant. Instead, 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. Therefore, 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.

On appeal, current counsel states that the duties of the proffered position parallel those of an accountant, as discussed in the Department of Labor's *Dictionary of Occupational Titles (DOT)* and he provides a comparison of the proffered position's duties with those identified by the *DOT*.

The *DOT* is not, however, a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The Specific Vocational Preparation (SVP) rating assigned by the *DOT* is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Accordingly, the *DOT* does not establish the proffered position as a specialty occupation under the first criterion.

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. In the instant case, the petitioner has submitted no evidence that responds to either prong of this criterion. Therefore the record does not establish the proffered position as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature.

There is no evidence in the record establishing the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner must normally require a degree or its equivalent for the position.

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 them is usually associated with the attainment of a baccalaureate or higher degree. As discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), no evidence indicates that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Consequently, the record fails to establish that the proffered position as a specialty occupation under 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.