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U.S. Citizenship
and Immigration
Services

D2

FILE: WAC 02 189 50339 Office: CALIFORNIA SERVICE CENTER Date: MAY 25 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 director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) rejected a subsequent appeal. Pursuant to a settlement agreement related to a Complaint for Declaratory and Injunctive Relief filed by counsel in the United States District Court for the Central District of California, the AAO reopened the matter on its own motion. The appeal will be dismissed. The petition will be denied.

The petitioner is an adult day healthcare facility, with nine employees and a gross annual income of \$440,000, located in Palmdale, California.¹ It seeks to employ the beneficiary as an accountant 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 because he determined the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) prior counsel's response to the director's request; (4) the director's letter of denial; (5) Form I-290B, with current counsel's brief; (6) the AAO rejection of the appeal; (7) Form I-290B, with current counsel's motion to reconsider; and (8) the AAO dismissal of the motion. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 The petitioner has indicated its only facility is located in Palmdale, but has submitted a Labor Condition Application identifying Los Angeles as the beneficiary's work location. Palmdale is located in Los Angeles County and the AAO does not find this discrepancy to be meaningful for the purposes of this proceeding.

- (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 petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s May 3, 2002 letter of support; and prior counsel’s March 3, 2003 response to the director’s request for evidence.

The duties of the proffered position, as described by the petitioner at the time of filing and prior counsel in response to the director’s request for evidence, would require the beneficiary to:

- Prepare operating expense reports, payrolls, vouchers, claims/benefits, remittances, periodic accounting reports and withholding taxes;
- Examine and verify disbursement vouchers as to completeness of signatures and supporting documents to determine the validity, propriety and reasonableness of claims;
- Conduct inventory control and develop systematic accounting and internal control procedures on payroll and tax reports to taxing agencies;
- Compute and record charges, refunds, costs of errors or omissions, and all expenses including rentals and other charges;
- Analyze and interpret the petitioner’s financial performance;
- Make projections and recommendations respecting administrative cash flow projections;
- Evaluate budgetary performance and prepare budgetary projections;

- Prepare monthly bank reconciliation statements; and
- Analyze and review computer programs to increase the petitioner's operating efficiency, train other employees to use programs, enter program codes into the computer system and input test data.

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 to reflect the employment of bookkeepers, employment that does not impose a degree requirement on individuals seeking entry-level employment.² While, as discussed below, the AAO does not find the proffered position to require a degreed accountant, it has also concluded that the employment described by the petitioner may not be characterized as that of a bookkeeper. Accordingly, the AAO withdraws the director's finding in this regard.

The petitioner has stated that the proffered position is that of an accountant. To determine the extent to which 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.³

The AAO finds the above discussion to be reflected in a number of the proffered position's 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

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

³ *Ibid*, at www.bls.gov/oco/ocos001.htm.

performance of duties requiring accounting knowledge does not establish that 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.⁴

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.⁵

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,⁶ the AAO turns to the record for

⁴ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

⁵ 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.

⁶ 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 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 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.

As the petitioner is a healthcare facility, the AAO notes that the highly-regulated nature of the U.S. healthcare industry could serve to create a potentially complex financial environment for the beneficiary. Accordingly, it has reviewed the record for information regarding the petitioner's business and financial operations, and the extent to which these operations are affected by State of California regulations. The record, however, contains no evidence of the petitioner's business or financial operations,⁷ nor any information regarding the impact of healthcare regulations on its business and whether such regulations complicate its financial operations or would require the beneficiary to have specialized accounting knowledge. Neither has the petitioner submitted any tax-related or other financial records to indicate that it has business-related debt, or acquisitions that would require advanced accounting knowledge for the analysis of its financial performance or the calculation of its taxes.

Accordingly, the record fails to establish that the petitioner's financial operations 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. Therefore, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 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 of the criterion's prongs. Accordingly, the proffered position may not be established as a specialty occupation based on an industry-wide degree requirement or its unique or complex nature.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

⁷ Although the Form I-129 indicates that the petitioner employs nine individuals and grosses approximately \$440,000 annually, it has submitted no evidence in the form of tax returns, audits or financial reports to support these claims.

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 the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. The record, however, provides no evidence of the petitioner’s hiring practices. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the requirements at 8 C.F.R. 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to prove 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. To establish the proffered position as a specialty occupation under the fourth criterion, the petitioner must, therefore, distinguish its duties from those normally performed by junior accountants, employment that the *Handbook* states does not impose a degree requirement. However, the AAO finds no evidence to indicate that the beneficiary’s duties would require greater knowledge or skill than that normally possessed by junior accountants. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have skills other than those of a junior accountant. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Moreover, at the time of filing, the petitioner stated that the duties of the proffered position could be performed by the beneficiary because he held a degree in business administration. However, when a job can be performed by a range of degrees or a degree of generalized title, like that of business administration, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor’s or higher degree in a specialized field of study. Accordingly, the record also fails to establish the proffered position as a specialty occupation under the fourth criterion because the petitioner has indicated that the proffered position’s duties do not require the beneficiary to hold a degree in a directly related field.

Beyond the decision of the director, the AAO finds the evidence of record to be insufficient to establish that the beneficiary is qualified to perform the duties of a specialty occupation. To demonstrate the beneficiary’s qualifications, the petitioner has submitted copies of the beneficiary’s diploma from the AMA Computer College in The Philippines and his academic transcripts from that institution, as well as an evaluation of his academic experience prepared by Education Evaluators International (EEI), Inc. in Los Alamitos, California. The EEI evaluation finds the beneficiary to hold the equivalent of a U.S. bachelor of science degree in business administration with a major in management information systems, which it concludes provides the beneficiary with a baccalaureate degree with dual majors in management information systems and business administration awarded by a regionally credited college or university in the United States. A business administration degree with a major in management information systems is not, however, a degree required by the occupation of accountants. A degree in business administration is insufficient to establish an individual as qualified to perform the duties of a specialty occupation unless the courses pursued and knowledge gained is a realistic prerequisite for the employment. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The

beneficiary holds the equivalent of a U.S. business administration degree with a major that is related to the work performed by management information systems directors, employment that is distinct from that of accountancy.⁸

Prior counsel in his response to the director's request for evidence acknowledged that the beneficiary did not hold a degree in accounting but asserted that the beneficiary was, nevertheless, qualified to perform the duties of the proffered position as he had "some basic knowledge of [a]ccounting principles and techniques in view of the fact that he has taken the following subjects: Fundamentals of Accounting, Principles of Accounting 2 and Financial Accounting, as part of his baccalaureate degree." Counsel's contentions do not, however, establish that the beneficiary is qualified to perform the duties of an accountant. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). The record does not establish that the beneficiary holds the equivalent of a U.S. baccalaureate or higher degree required by the specialty occupation, as stipulated by the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C). For this reason as well, the petition will be denied.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation or that the beneficiary is qualified to perform the services of 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.

⁸ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos258.htm.