

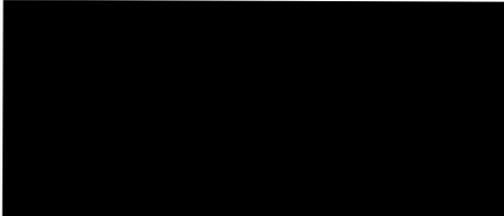
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U.S. Department of Homeland Security
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U.S. Citizenship
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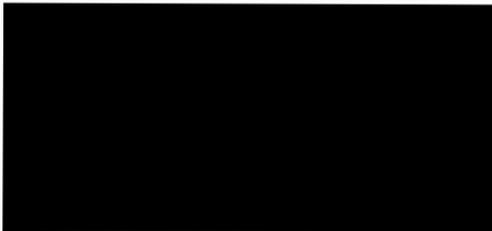
FILE: WAC 04 191 51798 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 2006**

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 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 the administrative arm of a group of companies that seeks to employ the beneficiary as a junior accountant/bank reconciliation coordinator and 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 basis that the petitioner failed to establish that the proposed position satisfies any of the specialty occupation criteria set forth in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief.

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 above criteria to mean not just any bachelor’s or higher degree, but one in a specific specialty that is directly related to the proposed position.

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

The petitioner seeks the beneficiary's services as a junior accountant/bank reconciliation coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's letter in support of the petition; and the response to the RFE. According to this evidence, the beneficiary would perform duties that entail applying knowledge of accounting, finance and business administration to analyze past and present financial operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses, using the computer; assisting the accounting department in reconciling all the Howroyd Companies general, payroll, regional, and office accounts on a monthly basis; determining which checks older than 90 days have cleared the bank; resolving bank errors that are not booked into the system; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheet, profit and loss statement, and other reports to summarize current and projected company financial positions; and resolving outstanding differences between bank and book records.

The director stated that the proposed position resembled a bookkeeping, accounting, or auditing clerk as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that these positions does not require a bachelor's degree in a specific specialty. The director found that the duties of the position did not appear to be of a complexity that would require the attainment of a bachelor's degree in accounting or a related field.

On appeal, counsel asserts that the director mischaracterized the position as a bookkeeping or accounting clerk. Counsel asserts that the size of the petitioner's business and its organizational complexity reflect the professional nature of the proposed duties. Counsel asserts that the record shows that the petitioner has a history of only hiring degreed individuals for the position.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has not established that the proposed position meets any the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title, but reviews the specific duties of the proposed position, combined with the nature of the petitioning entity's business operations. 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 bachelor's or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a bachelor's 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. The AAO considers several factors when determining these criteria, including: 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)).

The petitioner has stated that the proposed position is that of an accountant. To determine whether the duties of the proposed position support the petitioner's characterization of its employment, the AAO turns to 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 petitioner submitted a list of employees and indicated that the beneficiary would serve in the bank reconciliation department, which, at the time of submission, consisted of a group leader, a junior accountant/bank reconciliation coordinator, and two bank reconciliation coordinators. The beneficiary would presumably report to the group leader of the division. Several staff accountants populate the tax department and the profit and loss statements department. The petitioner does not list an accountant position in the bank reconciliation department. The proposed duties consist primarily of bank reconciliation, with some analysis of financial records. While these duties would require the beneficiary to have an understanding of accounting principles, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proposed 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 requires a bachelor's degree level of accounting knowledge.

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

¹ *Ibid.*

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 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

The proposed duties are not 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 bachelor’s degree requirement on those seeking entry-level employment. As a result, the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a bachelor’s or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proposed 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 proposed 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 the criterion. Therefore, the proposed position may not be established as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature.

To determine whether a proposed position may be qualified 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.

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

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.

The petitioner asserts that all of the employees that work in its accounting department have at least a bachelor's degree in accounting or a related field. To support this assertion, the petitioner submitted an employee list that highlights the petitioner's organizational structure and the fact that it has 16 divisions. The list does not reflect the degrees held by the employees, if any. The petitioner did not submit corroborating evidence, such as copies of those employees' diplomas or their dates of employment. 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)). The petitioner further asserts that it requires the holder of the position to hold a bachelor's degree in accounting or a related field. To support this assertion, the petitioner submitted several past job announcements for the position. Nevertheless, in order to meet the requirements of this criterion, the petitioner must establish that it has a history of normally requiring degreed individuals. The record fails to establish that the proposed position meets the criterion at 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 them is usually associated with the attainment of a bachelor's or higher degree. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. While the petitioner is a large company with 140 employees, it has not established that, as a junior accountant/bank reconciliation coordinator, the beneficiary will perform the duties of a degreed accountant. The petitioner does not relate the duties to the functions of the department with any specificity, and has not submitted examples of the type of analyzing reports to be delivered. The position, as described, does not represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant. The record also fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proposed 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.