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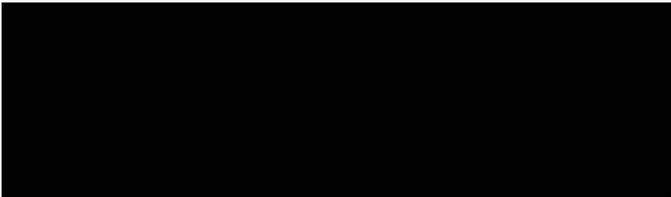
FILE: WAC 05 160 52596 Office: CALIFORNIA SERVICE CENTER Date: NOV 28

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, 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, and the petition will be denied.

**The petitioner imports and wholesales beauty supplies. It claims to employ six personnel, and had an approximate gross annual income of \$1,179,217 in 2004. It seeks to employ the beneficiary in the position of accountant. Accordingly, the petitioner 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 determining that the position was not a specialty occupation.**

**The record of proceeding before the AAO contains:** (1) the May 19, 2005 Form I-129 and supporting documentation; (2) the director's May 23, 2005 request for further evidence (RFE); (3) the petitioner's June 24, 2005 response to the director's RFE; (4) the director's July 21, 2005 denial letter; (5) counsel's August 6, 2005 motion to reconsider; (6) the director's August 25, 2005 decision denying the motion to reconsider; and (7) counsel's September 8, 2005 Form I-290B. 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) 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 (5<sup>th</sup> 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. In an attachment appended to the petition, the petitioner indicated:

Typical duties [of the accountant's position] will include making independent decision[s] regarding accounts payable and receivable, inventory control, determining and allocating costs, and taxes. [The beneficiary] will prepare business reports regarding specialized topics of interest to company management; manage cash flow by making projections of income and expenses and advise the CFO. She will deal with the bank regarding financing of purchases and letters of credit. The accountant will prepare profit and loss, income and expenses and asset and liability reports, monthly year-end financial statements, tax reports, bank reconciliations, letter of credit reports, and a variety of other statements and reports as directed by the Chief Financial Officer. The accountant prepares tax return[s] including communication with outside professionals on tax issues, and overseeing client credit and billing.

The petitioner also provided its organizational chart showing a chief executive officer, a chief financial officer, a secretary/director, a general manager, a product instructor, two marketing employees, two salespersons, one shipping employee, and the beneficiary in the position of accountant. The organizational chart noted that the product instructor, the marketing supervisor, and two salespersons were paid as independent contractors. The petitioner's California Form DE-6 for the quarter ending December 31, 2004, showed five employees the first two months of the quarter and six employees the last month of the quarter.

In a January 24, 2005 response to the director's RFE, the petitioner provided the following job description:

Analyze budget and quarterly financial information and preparation of short and long range financial projection, reports, and forecasts (15% very high level of responsibility), prepare account payable and account receivable reports and maintain accurate records of cost-of-goods sold and inventory control and cash flow (35% high level of responsibility), prepare payroll including withholding, standard and specialized financial reports[,] preparation of tax and other government reports and returns (25% very high level of responsibility), prepare monthly and year-end financial statements, bank reconciliation, letter of credit reports and preparation of reports required by the company's bank and lenders (25% very high level of responsibility). This is a part-time 25-35 hours per week (3-4 days a week). The beneficiary will not be supervising anyone.

Counsel also provided copies of Internet job announcements for accounting positions from two real estate firms, a retailer, an entertainment distribution company, a healthcare services management company, a software company, and two other businesses. The petitioner also provided copies of its vendor and customer lists, invoices, and its 2003 and 2004 Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return. The 2003 IRS Form 1120 showed \$1,426,221 in gross receipts and a total net income of \$32,193 and the 2004 IRS Form 1120 showed \$1,179,217 in gross receipts and a negative net income of \$77,913.

On July 21, 2005, the director denied the petition determining: that many of the described duties reflected duties performed by accountants as reported in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, but that sole reliance on a list of duties taken from the *Handbook* is insufficient to establish that the position is a specialty occupation; that performing "specialty occupation" duties that are incidental to the primary function is insufficient to establish that the duties to be performed qualify as a specialty occupation; and that obtaining a degree in a related area does not guarantee that the proffered position is a specialty occupation. The director noted the absence of any bookkeeping, accounting, or auditing clerks employed by the petitioner and determined that the duties normally performed by bookkeeping, accounting, or auditing clerks would be part of the duties of the proffered position. The director also determined based on the evidence of record: that the petitioner did not have the organizational complexity to certify a position as an accountant full-time or part-time; that the petitioner was not a company engaged in the type of business for which an accountant would typically be required, such as a public accounting firm, a payroll services firm, a tax preparation firm, a computer accounting systems or software developer, a government agency, or an academic institution; that the petitioner was not engaged in the type of business that would typically require a regular full or part-time accountant; and that there was no reasonable expectation that the petitioner would utilize the beneficiary solely in the capacity of an accountant or an auditor.

On appeal, counsel for the petitioner asserts that the director erred because the director did not consider that the position was a part-time position. Counsel contends that the accountant does not perform the bookkeeping and data entry duties as the secretary of the company and the shipping person perform these duties as needed. Counsel notes that the petitioner has previously used the services of an outside accounting firm and now that the company has grown it wants the accounting work done by a person who works for the company, leaving the accounting firm to perform special tasks or handle jobs that require a certified public accountant's input. On the Form I-290B, counsel for the petitioner asserts that in his motion to reconsider he attempted to make clear that the petitioner did not need a full-time accountant and that the proffered position would be a part-time position. Counsel contends that the director denied the petition only because the position would not be full-time.

Preliminarily, the AAO finds that the director did not make his determination based solely on whether the proffered position would be part-time rather than full-time. As counsel observes, part-time work is allowed for H-1B visas. The criteria for the H-1B classification focuses on the nature of the duties in relation to the petitioner's business, not on the number of hours the beneficiary will work. While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary as an accountant, it has reached its conclusions on grounds other than those relied upon by the director. Upon review of the record the AAO finds that the director erred when concluding that the petitioner does not have the organizational complexity and does not operate the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "[n]ation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." It does not indicate that the accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, government agencies, or academic institutions, as stated by the director. Accordingly, the petitioner's need for an accountant may not be discounted based on its type of business. Neither does the fact that the petitioner does not employ an accounting/bookkeeping staff establish that it would not employ the beneficiary to perform the duties of an accountant. The AAO withdraws the director's findings in this regard.

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the Department of Labor's *Handbook* reports that the industry requires a degree. The petitioner has stated that the proffered position is that of an accountant. To confirm that 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 of the proffered position. 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.

The AAO finds, however, that not all types of employment that require the use and understanding of **accounting principles require 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 position requires knowledge of accounting principles, which it may, 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.

The *Handbook* 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.

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation 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>1</sup>

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<sup>1</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.

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, the AAO turns to the record for information regarding the description of the beneficiary's duties and the nature of the petitioner's business operations. The petitioner's initial description of the duties of the proffered position is too general to conclude that the position will require more than a general understanding of accounting principles such as that attained through an associate's degree.<sup>2</sup> 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 matters where a petitioner's business is relatively small, like that in the instant matter, 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.

At the time of filing, the petitioner stated on the Form I-129 that it employed six individuals. The petitioner's California Form DE-6 for the quarter in which the petition was filed shows that the petitioner employed five or six individuals. Although the petitioner notes on its organizational chart that it utilizes the services of an additional four persons as independent contractors, it does not provide documentary evidence to substantiate their 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 has failed to establish that its organizational structure is so complex that only an individual with a four-year degree can assess and maintain the petitioner's payroll, tax, and other bookkeeping and auditing functions.

The petitioner has also failed to establish that it is a growing business with complex financial requirements. The record suggests that the petitioner is continuing the same or has experienced a slight decrease in its business. The record does not contain evidence, such as audits, sales projections, loan agreements or business plans that document a pattern of growth in the petitioner's revenues or business operations. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex rental/lease agreements, or other contracts that might complicate its financial situation. Again, going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require that the proffered position requires a degree in accounting.

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<sup>2</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.

The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear at most to be more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement in a specific discipline on those seeking entry-level employment. As a result, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(iii)(4)(A)(1).

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 matter, the petitioner has submitted several Internet job announcements for positions within the accounting field. However, the petitioner has not presented evidence that the advertising employers are similar to the petitioner in size, number of employees, level of revenue, or type of business. Moreover, the descriptions while containing some general similarities are insufficient to substantiate that the positions are parallel. The petitioner has not submitted evidence that similar organizations require a specific degree for duties parallel to the duties of the proffered position. As observed above, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior accountant who is not required to have a four-year degree. Therefore, the proffered position may not be established as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether 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. In this matter, the petitioner has not submitted evidence that it employed only degreed accountants to perform the petitioner's financial tasks prior to the beneficiary's employment. Rather, the petitioner has indicated through counsel that it previously used an accounting firm to assist with the petitioner's accounting needs. However, the record does not demonstrate whether the accounting firm employed only personnel with four-year degrees to fulfill the petitioner's accounting needs or routinely used the services of junior accountants who did not possess four-year degrees. Accordingly, the petitioner has not provided independent employment history with regard to the proffered position and cannot establish it as a specialty occupation on the basis of its normal hiring practices. The petitioner has failed to meet 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 baccalaureate 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. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant. As a result, the record also fails to establish that the proffered 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 proffered position as a specialty occupation. Accordingly, the appeal will be dismissed.

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.