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FILE: WAC 05 145 51982 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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 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 an electrical contractor with four employees and \$464,635.00 in gross income at the time of filing. 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (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 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. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Maintain and administer the general accounting system including upkeep of the general ledger, consolidations of financial records, and submission of data for financial reporting purposes as well as analyze financial reports and information by performing appropriate entries;
- Analyze operations, trends, costs, revenues, financial commitments, and obligations incurred, to project future revenues and expenses, usually using computer software programs; and to develop, maintain, and analyze budgets and forecasts, and prepare periodic reports with comparisons of actual costs to forecast and budget;
- Record all financial functions of the business and incorporate them in the accounting system of the business including the analysis of financial information detailing all assets and all liabilities, the capital of the business, and preparation of profit and loss statements, and other reports to summarize current and projected financial position, using a calculator or computer;
- Keep, maintain and update all accounting related documents to include all supporting documents in accordance with business practice and government regulations; review and audit contracts, vouchers and orders; and make reports to support each transaction before payment or settlement;
- Comply with and implement all government rules and regulations including payment of all taxes on time and, if necessary, establish and/or modify the documenting and coordinating of accounting and accounting control procedures seeing that they are timely implemented;
- Plan, collect, analyze and record data on material purchases, inventory and labor; provide price/profitability reports; and devise and implement manual or computer-based systems for general accounting;

- Employ effective financial controls for project contracting, inventory and profitability accounting; and direct and coordinate, if ever, activities of other bookkeeper(s) and clerical worker(s) performing other related accounting and bookkeeping tasks;
- Ensure that cost standards accurately reflect actual costs coupled with variance on project costing on material, labor and overhead; and
- Perform other duties that management may require.

The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

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 many of those performed by accountants, but determined that the petitioner did not have the type of business or the organizational complexity and scale to require the services of a full- or part-time accountant. While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary in a position requiring a degreed accountant, it has reached its conclusions on grounds other than those relied upon by the director.

The AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity, nor 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 "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time."<sup>1</sup> It does not indicate that 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 intention to employ an accountant may not be discounted based on its type of business. Neither does the fact that the petitioner does not have an accounting/bookkeeping staff establish that it would not employ the beneficiary to perform the duties of an accountant. Therefore, the AAO withdraws the director's findings in this regard.

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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).

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>2</sup>

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting or management accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish 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.<sup>3</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 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

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

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>4</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>5</sup> the AAO turns to the record for 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.

To the extent that they are described in the record, the proposed duties do not establish that their performance would require the practical and theoretical application of at least a baccalaureate level of a body of highly specialized accounting knowledge. The duties include: posting of transactions from cash disbursement books, cash receipt and sales books, general journals and ledgers; the collating and filing of invoices; filing check vouchers; preparing daily cash reports summarizing disbursements, receipts and collections to forecast and schedule utilization of available funds; preparation and issuance of checks; preparation and verification of invoices; preparation of statements of account for clients; preparation of schedules showing aging of accounts receivable; replenishment of funds for petty operational disbursements; preparation of payroll; analyzing material costs from various suppliers and comparing those costs to a set price index to insure savings; closing books and accounts for preparation of financial reports; preparation of an analysis of operational results such as financial ratios, income and expense ratios and debt-to-equity ratios to support monthly financial statements; and preparation and adjustment of entries to the general journal and posting them to the general ledger. Neither the *Handbook* nor any evidence of record establishes that the performance of such duties normally requires at least a bachelor’s degree in accounting or a related specialty. Further, the petitioner limits its descriptions of the position and the duties comprising it to generalized descriptions of generic functions. Such information fails to demonstrate any dimension of uniqueness, specialization, or complexity that would require the application of at least a bachelor’s degree level of accounting knowledge. 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

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<sup>4</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>5</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.

requirement for entry into the particular position.

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, counsel refers to the *Handbook's* discussion of the degree requirement for the occupation of accountants to establish that the proffered position is a specialty occupation under the criterion's first prong. The AAO does not agree.

To the extent described in the record, the proffered position does not appear to exceed that of a junior accountant, employment that the *Handbook* indicates may be performed by individuals who have associate's degrees in accounting or who have an appropriate level of experience. Accordingly, the proffered position may not be established as a specialty occupation under the first prong of the second criterion based on the *Handbook's* discussion of management, public and government accountants. The petitioner also submitted documentation from a web site for an electrical contracting company that employs an accountant with a bachelor's degree. That documentation does not establish that the accountant referenced performs the same duties as those to be performed by the beneficiary. Further, the company referred to is not similar to the petitioner in that it states that it is a multi-million dollar company conducting business in several states. Also, the record does not establish the web site as an authoritative statement of an industry standard. As the petitioner has submitted no evidence to prove that its degree requirement for the proffered position is common in parallel positions among similar organizations, it has failed to establish the proffered position as a specialty occupation based on the practices in its industry.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence that would support such a finding. As previously discussed, the generic and generalized fashion in which the proposed duties are described do not establish that the position is unique or complex. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

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 names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner has submitted no evidence regarding its hiring practices and states that the position is new with the company. Accordingly, the record does not establish the proffered position as a specialty requirement under the third criterion.

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 these duties is usually associated with the attainment of a baccalaureate or higher degree. As reflected in the earlier discussions of the generic and generalized description of the proposed duties, the record does not establish that the duties of the offered position are specialized or complex as required by this criterion. The AAO finds no evidence to indicate that the beneficiary's duties would require greater knowledge than that normally possessed by junior accountants. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of 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.