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U.S. Citizenship
and Immigration
Services



112

FILE: WAC 04 002 51084 Office: CALIFORNIA SERVICE CENTER Date: OCT 12 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:



PHOTOCOPY

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a convalescent home. It seeks to employ the beneficiary as an accountant 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a convalescent home, established in 2002, with eight employees and a gross annual income of \$250,000. The petitioner seeks to employ the beneficiary as a full-time accountant for three years, at an annual salary of \$37,500, with responsibility for accounting and tax preparation tasks. In

response to the RFE the petitioner refers to the proffered position as an accountant/administrator and lists the duties of the position as follows:

- Reports directly to the owner regarding financial status of the business.
- Full charge accountant: deposits, cash, checking account, billing, A/R, A/P, payroll.
- Prepare bank reconciliation, month-end closing, insurance receivables, annual federal and state tax returns, income statements, balance sheet and client records.
- Administer the facility in accordance with the regulations and policies, program and budget
- Develop and administer plan and procedure to ensure clear definition of line of responsibility, equitable workloads and adequate supervision. This includes in-service training to staff.
- Provide and ensure the provision of services to the clients/consumers with appropriate regard for their physical and mental well-being and needs including those services identified in their pre-admission appraisals.
- Direct and evaluate client services within limits of the functions and policies established by the facility license and licensee.
- Prepare the facility's budget and manage expenditures according to the facility's limitations.
- Establish the facility's program and budget.
- Comply with applicable laws and regulations.
- Maintain and supervise the maintenance of financial and other records.
- Direct the work of others if applicable.
- Recruit, employ, train, and evaluate qualified staff, and terminate employment of staff if applicable to the facility.
- Supervise the regular monitoring, evaluation, and summary of client individual program plan (IPP) progress and other clients' records and maintenance.
- Develop facility's individual program plans for clients.
- Monitor the proper and continued administration of medications to clients by trained staff.
- Ensure timely filing of unusual incidents with regulatory agencies.
- Maintain comfortable and safe living environment for clients.
- Maintain required facility documentation through logs and verify records.
- Ensure the safety and welfare of all at the facility (clients, visitors, and staff).
- Maintain liaison with community care licensing, regional centers, day programs, schools, families, and community agencies.
- Promote community and family involvement, participation and resource development.
- Provide continuing education and training for staff, ensure appropriate staffing at all times, and provide client care when needed.
- Ensure required drills and documentation of life safety techniques.
- Develop progress reports on clients' performance for ID team review.

According to the petitioner, the minimum educational requirement for the proffered position is a bachelor of science in business administration with a major in accounting. The beneficiary is qualified for the position, the petitioner declares, by virtue of her bachelor of science in commerce, with a major in accounting, from the University of the East in Manila, the Philippines, granted on March 28, 1980.

In his decision the director found that while some of the duties of the proffered position appeared to involve accounting tasks, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, there were two reasons why the proffered position could not be classified as an accountant

position. The first was that the petitioner did not have the organizational complexity to warrant the services of an accountant. Noting that the record failed to show that the petitioner had any bookkeeping, accounting, or auditing clerks to maintain records that could be utilized by an accountant, the director concluded that duties normally performed by accounting, bookkeeping, and auditing clerks “would clearly be a part of the duties of the position offered” and that any accounting tasks inherent in the position “would only be incidental to the primary duties.” Accounting, bookkeeping, and auditing clerks, as the *Handbook* makes clear, normally do not require a baccalaureate level of education and therefore do not qualify as specialty occupations. The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engaged in the type of business for which an accountant would typically be required for any significant length of time. In addition, the petitioner’s business operations were not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting and/or auditing functions. The record failed to show that the duties of the proffered position could not be performed by an individual with less than baccalaureate level education, the director concluded, or that the position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel cites a number of court and AAO decisions ruling that a petitioner’s size and scale of operations are not dispositive factors in determining whether a position offered by the company meets the requirements of a specialty occupation. Counsel also maintains that the petitioner’s prior hiring history is irrelevant in determining whether the proffered position is a specialty occupation. Counsel reiterates the petitioner’s contention that the duties of the proffered position are those of an accountant, which qualifies as a specialty occupation according to the *Handbook*, and asserts that the petitioner needs an accountant’s services to facilitate its growth and maintain its competitive edge.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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 also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2006-07 edition, at 70:

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Among other responsibilities are budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including

stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Most accounting positions require at least a bachelor's degree in accounting or a related field, as indicated in the *Handbook*, *id.* at 71. The *Handbook* also states, however, that some junior accounting positions require less than a baccalaureate degree:

Many graduates of junior colleges and business and 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.

Id. at 72. Thus, although most accounting positions require a baccalaureate degree in accounting or a related specialty, it is possible to enter some positions in the occupational field with less than a baccalaureate educational background and/or experience as a bookkeeper or accounting clerk.

The *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

The occupation of bookkeeping, accounting, and auditing clerks is described as follows in the *Handbook*, 2006-07 edition, at 434:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The **Accreditation Council for Accountancy and Taxation (ACAT)** is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks ... such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust . .

..
....

[D]emand 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. Certified bookkeepers and those with several years of accounting or bookkeeper experience will have the best job prospects [emphasis added].

According to the *Handbook*, a two-year associate's degree in business or accounting is often required for bookkeeping, accounting, and auditing clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* at 435. The *Handbook* also indicates that for tax preparers the most significant source of education or training is on-the-job training. *See id.* at 662.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

While the proffered position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate or higher degree in accounting or a related specialty field. The petitioner's gross annual income for the year 2002, as evidenced by the federal income tax return in the record, was \$138,924. Though the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations do have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with a company of modest income, like the petitioner, differ significantly from the responsibilities associated with an annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients. The AAO notes that an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping, accounting, and auditing clerks, as well as junior accountants.³

Some of the duties listed by the petitioner in its response to the RFE are of a general administrative nature which accord with the DOL *Handbook's* description of an administrative services manager. That occupation is described as follows in the *Handbook*, 2006-07 edition, at 25:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as . . . administration . . . information and data processing . . . [and] records management

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers

In small organizations, a single administrative services manager may oversee all support services. In larger ones, however, first-line administrative services managers often report to mid-level managers who, in turn, report to owners or top-level managers. As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities

The petitioner's organizational chart shows that the proffered position is subordinate to the owner and superior to the assistant administrator and the support staff. With respect to the educational requirements for administrative services directors, the *Handbook* states as follows:

³ According to the website for Skyline College, a community college located in San Mateo, California, (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, and break even analysis, as well as developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance

Whatever the manager's educational background, it must be accompanied by related work experience reflecting demonstrated ability. For this reason, many administrative services managers have advanced through the ranks of their organization, acquiring work experience in various administrative positions before assuming first-line supervisory duties

Id. at 26. What the *Handbook* makes clear is that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into an administrative services manager position. A two-year associate degree, or relevant work experience without any educational degree, may suffice for many positions. Even for managers of highly complex services, the *Handbook* indicates that a baccalaureate degree in a variety of academic areas would be suitable.

Based on the foregoing analysis, the AAO determines that the duties of the proffered position are a combination bookkeeping, accounting, and auditing clerk, with some junior accounting functions and administrative services tasks. As indicated in the DOL *Handbook*, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into any of these occupations. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted a series of internet job advertisements for accounting or auditing positions as evidence that a bachelor's degree in accounting or a related specialty is a common degree requirement for accountants. None of the companies is in the same line of business as the petitioner, however, and the advertisements do not indicate that their scale of operations is similar to the petitioner's. In addition, some of the advertisements indicate that a combination of relevant work experience and education can substitute for a degree in accounting or a related specialty. Thus, the internet advertisements do not establish that a bachelor's degree requirement in accounting or a related specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting or a related specialty, as required for the position to qualify as a specialty occupation

under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). The position is not unique, and the evidence of record does not show a level of complexity that is beyond the competence of an accounting, bookkeeping, or auditing clerk, or of a junior accountant, or of an administrative services manager, to perform. Those occupations, as indicated in the *Handbook*, do not require a baccalaureate degree.

With respect to the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) – “the employer normally requires a degree or its equivalent for the position” – the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor’s degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The evidence of record does not show that the duties of the position exceed the occupational scope of a bookkeeping, accounting, or auditing clerk, or of a junior accountant, or of an administrative services manager, occupations which the *Handbook* indicates do not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

With regard to the prior court and AAO decisions cited by the petitioner, the information provided by the petitioner does not indicate that any of those proceedings involved a position comparable to the proffered position in this case. Nor does the petitioner demonstrate how any of those decisions supports its claim that the duties the beneficiary would be performing in the proffered position are those of an accountant and, as such, require a baccalaureate or higher degree in a specific specialty. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). For the reasons previously discussed, the record in the instant proceeding does not establish that the proffered position is that of an accountant or that it qualifies as a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.