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**U.S. Citizenship  
and Immigration  
Services**

*D2*

**FILE:** WAC 04 257 53958    **Office:** CALIFORNIA SERVICE CENTER    **Date:** AUG 09 2007

**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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides payroll services and higher management leadership skills to different business segments under the umbrella of the main company Pacifica Companies. On the Form I-129, the petitioner claims to employ 147 personnel and to have a gross annual income of \$1,480,496. It seeks to employ the beneficiary as an 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 is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation filed September 22, 2004; (2) the director's January 26, 2005 request for additional evidence (RFE); (3) counsel's April 12, 2005 response to the director's RFE; (4) the director's January 19, 2006 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. 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.

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.

In the petitioner's September 7, 2004 letter appended to the petition, the petitioner described the duties of the proffered position as including the following:

Prepare monthly Financial Statements and Cash Flow reports. Analyze financial operations and estimates future revenues and expenditures. Analyze budget variance and develop corrective measures. Interprets budget to management. Assists company to develop budget and efficient use of funds. Prepare statements reflecting monthly appreciated and depreciated values. Maintain accounting records and fixed assets. Analyze realized and unrealized gains and losses. Summarizes statement on annual basis for income tax purpose. Prepares schedules for amortization of buildings and equipments. Assist in the maintenance of computerized accounting system. Ensure that the implemented accounting system complies with the generally accepted accounting principles. Strengthen internal controls and develop systems of accountability for multiple cost centers. Conducts selective operational and financial audits. Assist in complying [sic] periodic banks' reports. Exercise professional care & judgments to protect the assets and interest of the company.

In an April 12, 2005 response to the director's RFE for a more detailed statement of the proffered position's duties, and the percentage of time spent on those duties, counsel for the petitioner provided the same description and added the time spent on each duty as:

1. Prepare monthly Financial Statements and Cash Flow reports. (20%)
2. Analyze financial operations and estimates future revenues and expenditures. (10%)
3. Analyze budget variance and develop corrective measures. (5%)
4. Interprets budget to management. (5%)
5. Assists company to develop budget and efficient use of funds. (5%)
6. Prepare statements reflecting monthly appreciated and depreciated values. (5%)
7. Maintain accounting records and fixed assets. (10%)
8. Analyze realized and unrealized gains and losses. (10%)
9. Summarizes statement on annual basis for income tax purpose. (5%)
10. Prepares schedules for amortization of buildings and equipments. (5%)
11. Assist in the maintenance of computerized accounting system. (3%)
12. Ensure that the implemented accounting system complies with the generally accepted accounting principles. (2%)
13. Strengthen internal controls and develop systems of accountability for multiple cost centers. (3%)
14. Conduct selective operational and financial audits. (2%)
15. Assist in complying [sic] periodic banks' reports. (5%)
16. Exercise professional care & judgments to protect the assets and interest of the company. (5%)

In addition to the time spent on each duty, counsel noted: that Pacifica Companies is a group of diversified real estate companies, including the petitioner; that the "Pacifica" had acquired six multi-unit apartments (1,626 units) to convert to condominiums in Las Vegas, Nevada; that the company had invested \$52 million for each project for a total of \$312 million; and the company needed an additional accountant with the addition of these projects.

The record also contains an organizational chart listing three individuals reporting directly to the petitioner's financial controller. The organizational chart shows that two of the three individuals each had a subordinate bookkeeper; the third individual was shown with a subordinate assistant accountant, the beneficiary. The petitioner also provided a list of properties (units) under the control of each of the three individuals and their assistants. One individual with the designation of "Acctg. A/P Asst. SVP" and her subordinate bookkeeper controlled 1,640 units; a second individual with the designation of "Prog. MGR/CC" and his subordinate bookkeeper controlled 880 units; and the third individual with the designation "Accountant Mgr." and his subordinate, assistant accountant, (the proffered position) controlled 1,806 units.

The petitioner also provided copies of its third and fourth quarter California Forms DE-6, Quarterly Wage and Withholding Report, for 2004 listing a number of employees and copies of its 2002 and 2003 Internal Revenue Service (IRS) Forms 1065, U.S. Return of Partnership Income.

On January 19, 2006, the director denied the petition determining that although the description of duties suggested the proffered position was that of an accountant, the evidence did not demonstrate that the beneficiary would actually be employed as an accountant. The director noted that the petitioner had three accountants and that two of the accountants had assistant bookkeepers; the director determined that the

evidence of record did not support that that the third accountant required the assistance of an accountant rather than that of a bookkeeper. The director acknowledged that CIS should not make a determination as to the petitioner's financial allocation or business necessity for a given position, but observed that the petitioner must still establish that the proffered position actually exists. The director determined that the record did not logically support the need for a fourth accountant. The director also noted several inconsistencies found in the record and determined that the discrepancies infringed upon CIS ability to determine the size, scope, and business of the petitioner.

On appeal, the petitioner provides a statement from the beneficiary's prospective supervisor who indicates that the total value of the projects he handles has an initial aggregate cost of \$519 million and because the value of each project is substantial, it is essential that the company employ an individual with a bachelor's degree in accounting to handle budgeting, cost control, and financial planning for each project. The beneficiary's prospective supervisor indicates further that the beneficiary "will work directly under my supervision. As he attains more experience, he will be expected to work independently and be responsible for the supervision of additional bookkeeping and accounting personnel." The petitioner also provided information clarifying the inconsistencies noted by the director.

Counsel for the petitioner asserts that precedent decisions clearly hold that the position of accountant is a specialty occupation and that the director acknowledged that the petitioner's description of the duties of the position were that of an accountant. Counsel asserts that the dollar amount of the projects shows the petitioner's need for another accountant and the evidence does not support the director's speculation regarding the petitioner's need for a fourth accountant. Counsel cites unpublished decisions in support of these assertions. Counsel contends that the proffered position is so complex or unique that only an individual with a bachelor's degree in accounting can perform the duties of the position and that the nature of the duties is so complex that the knowledge required to perform them is associated with the attainment of a bachelor's degree in accounting.

Counsel's assertions are not persuasive. Upon review of the record in this proceeding, the record is deficient in establishing the proffered position is a specialty occupation. The AAO notes that the petitioner has hired an accountant to handle the projects with an initial aggregate cost of \$519 million. The proffered position is for an individual who will assist the already employed accountant who handles the accounting for the acquisition, construction, and payroll for these projects. As the director referenced, the petitioner's organizational chart shows individuals in the position of bookkeepers assisting the two accountants holding similar positions to the beneficiary's prospective supervisor. The record does not include information regarding the duties of the two bookkeepers; the educational qualifications of the two bookkeepers; the value of the projects handled by the two accountants and their subordinate bookkeepers; or other information that would aid in distinguishing the bookkeeping positions from that of the proffered position of an assistant accountant. 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. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO is unable to conclude that the proffered position is distinguishable from the petitioner's bookkeeping positions that are aligned on the same organizational level as the proffered position or that the bookkeeper positions, despite the occupational title,

are specialty occupations. The record does not contain sufficient evidence to elevate the assistant accounting position to one that is a specialty occupation.

The AAO also finds that counsel has not furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 *Occupational Outlook Handbook (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 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.

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 types of employment that require the use and understanding of accounting principles require degreed accountants. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. 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.

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>

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>2</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 level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. The petitioner's level of income is sufficient to employ the services of an accountant and in this matter the AAO notes that the petitioner has employed three individuals in the positions of accountant.

In matters where a petitioner's organizational structure shows a number of accounting positions, the AAO reviews the record for evidence that the proffered position will utilize the beneficiary in an accounting

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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.

<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.

position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. As observed above, the record is deficient in this regard. The petitioner already employs an individual in an accounting position to handle projects with the initial aggregate value of \$519 million. The organizational chart indicates the petitioner will utilize the beneficiary in a position subordinate to that accounting position. The petitioner's generic description of the "assistant accounting" position is insufficient to establish the "assistant accountant" is a position that requires a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. The record does not distinguish the duties of the "assistant accountant" from the duties of those individuals holding "bookkeeping" positions who also assist their accounting superiors on similar type projects. Again as observed above, the record does not provide sufficient information that the bookkeeper and assistant accountant positions are different in scope, responsibility, or complexity. The AAO observes as well, that the beneficiary's prospective supervisor seems to acknowledge that the individual in the position of "assistant accountant" will need to acquire experience before working independently and moving to a position that has responsibility for other bookkeeping and accounting personnel. Such an acknowledgement suggests, as does the proffered position's location on the petitioner's organizational chart and the title of the position, that the position is a junior accounting position, employment that the *Handbook* does not normally impose a baccalaureate degree requirement 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)(4)(A)(1).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(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 not submitted evidence in this regard. The petitioner has not submitted evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO acknowledges counsel's assertion that the proffered position is so complex or unique that only an individual with an accounting degree can perform the duties of the position. However, 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 general and routine tasks that may be capably performed by a junior accountant who is not required to have a four-year degree. The petitioner relies on the value of the projects assigned to a senior supervisory accountant to imply that the assistant or junior accountant must also have a bachelor's degree in accounting to "assist" in accomplishing the accounting tasks associated with the projects. The record, however, does not contain evidence that the "assistant accountant" will perform any tasks that are distinguishable from the duties of a junior accountant or bookkeeper. 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 satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

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. Although according to the petitioner's organizational chart, the petitioner employs individuals subordinate to its other two senior accounting positions, the petitioner has not provided evidence of the degrees held, if any, in the subordinate positions. The petitioner has also failed to distinguish or clarify how the two bookkeeping positions are different from the proffered position and the AAO declines to speculate on any perceived differences based on the title of a position. The petitioner has not established the proffered position as a specialty occupation on the basis of its normal hiring practices pursuant to 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. Again, 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 without a baccalaureate or higher degree in accounting or a related specialty. 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. For this reason, the petition will be denied.

Beyond the decision of the director, the petitioner has not established the beneficiary is eligible to perform the duties of a specialty occupation. The record contains: a copy of the beneficiary's bachelor's of science degree in commerce issued by the Far Eastern University in Manila, Philippines; the beneficiary's transcript from the same university; and a license to practice as a certified public accountant issued by the Board of Accountancy in the Republic of the Philippines. The record, however, contains no evaluation of the beneficiary's foreign degree. Thus, the record does not establish that the beneficiary is eligible to perform the duties of a specialty occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the director's decision will be affirmed.

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