U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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FILE: EAC 06 169 50594 Office: VERMONT SERVICE CENTER Date: DEC 04 2007

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer of apparel, and it seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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

Section 214(i)(1) of the Immigration and Nationality Act (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:

> [A]n 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 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 proposed position.

To determine whether a particular position qualifies as a specialty occupation, CIS does not simply rely on the position's title. The specific duties of the proposed 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 (5th Cir. 2000). The critical element is not the title of the proposed 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 is a manufacturer of apparel with ten employees, and a gross annual income of $975,000. It proposes to hire the beneficiary as an accountant. In its April 28, 2006 letter of support, the petitioner stated that the duties of the proposed position would include applying the generally accepted principles of accounting in examining, analyzing, and interpreting the company's accounting records for the purpose of preparing statements and providing sound financial advice to management; analyzing and compiling financial information to prepare entries to accounts, such as ledger accounts, and documenting business transactions; preparing balance sheets, profit and loss statements and other reports to summarize the current and projected company financial position; auditing contracts, orders, and vouchers and other financial transactions; preparing tax returns; examining accounts; recording and computing taxes according to prescribed rates, laws and regulations; ensuring company compliance to tax regulations, information reporting and other tax authority requirements; and establishing, modifying and implementing accounting control procedures.

The director determined that the petitioner had submitted insufficient evidence to process the petition and requested that the petitioner submit additional information and documentation in support of the petition.

In response to the director's request for evidence, the petitioner submitted a more detailed job description for the proposed position, and four job advertisements for the position of accountant.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) under the fourth prong.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO agrees with the director's finding that the proposed position does not qualify for classification as a specialty occupation. While the AAO agrees with the director's conclusion that the proposed duties are not those of a degreed accountant, it does not agree with his finding that the petitioner does not engage in the type of business for which an accountant would typically be required, and withdraws that portion of his decision.

The petitioner has stated that its proposed position is that of an accountant. To determine whether the duties of the proposed position support the petitioner's characterization of its employment, the AAO turns to the 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 reflective of the petitioner's description of the duties of the proposed position and agrees that the petitioner's employment would require the beneficiary to have an understanding of basic accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proposed position would impose a degree requirement on the beneficiary. The question is not whether the position requires a 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.

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.[1]

To determine whether the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate's degree in accounting,[2] the AAO turns to the record for information regarding the nature of the petitioner's business operations. In cases where a petitioner's business is 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

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[1] 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.

[2] According to the website of Skyline College, a community college located in San Mateo, California (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.

baccalaureate degree in accounting or its equivalent.

As noted previously, the petitioner is a manufacturer of woman's apparel with ten employees and a gross annual income of $975,000. 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 have a direct and substantial bearing on the scope of the duties the beneficiary would perform as an accountant. The responsibilities associated with an ten-employee company with a gross annual income of $975,000 differ considerably from the responsibilities associated with a much larger income, as well as from the responsibilities of performing accounting work for multiple clients. The record here does not support a finding that the petitioner will 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. The petitioner has not demonstrated that its business, despite its relatively limited income, has the complexity of financial operations to require a degree in accounting.

Moreover, the record fails to offer evidence of the specific financial requirements associated with the petitioner's company, such as unique accounting systems or financial requirements that would add complexity to the beneficiary's duties. Neither does it indicate that the petitioner is currently required to manage outstanding business loans or other debt, or to deal with complex financial agreements or other issues that might complicate its financial situation. Therefore, the petitioner has not demonstrated that its business has the complexity of financial operations to require a degree in accounting.

As related in the foregoing discussion, the duties of the proposed position are not established as those of a degreed accountant. Moreover, financial clerks such as bookkeeping, accounting, and auditing clerks, who are not normally required to possess four-year degrees, normally perform many of the duties of the proposed position. As a result, the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted in response to the director's request for additional evidence and on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory

language, a petitioner must establish that its degree requirement is common in parallel positions among similar organizations.

The record fails to establish that any of these job postings come from companies that are "similar" to the petitioner, a manufacturer of apparel with ten employees. As noted by the director, one job posting was for BCBG Max Azria Group which has over 10 offices in the world and over 10,000 employees. The second posting is for a construction company with locations in three states. The third and fourth postings are for a consumer products company. The advertisement does not give details of the company and thus it is impossible to determine if the company is similar to the petitioner. There is insufficient evidence to establish that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply 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)).

Moreover, even if the AAO were to find that these companies were similar to the petitioner, the job postings are too few to establish an industry-wide standard.

Finally, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations. The petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, the nature of the duties of the proposed position as set forth in this petition does not support such a finding. Neither counsel nor the petitioner has provided information that distinguishes the proposed position from similar accounting positions not requiring a four-year degree or its equivalent, based upon its unique nature or complexity. The petitioner has failed to establish the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally 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.
However, no such evidence has been presented, and the petitioner concedes that this is a newly-created position. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

The fourth criterion requires the 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. To the extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As noted previously, the petitioner has not demonstrated a unique accounting system, established complex financial obligations or agreements, or otherwise established that the complexity of its financial operations require a person with a four-year degree in accounting. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement. The *Handbook* does not indicate any usual association between the type of position here in question and at least a bachelor's degree in a specific specialty. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of accounting positions not requiring or usually associated with at least a bachelor's degree in accounting. As a result, the record 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)*.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*), (*2*), (*3*), and (*4*). Accordingly, the AAO will 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.