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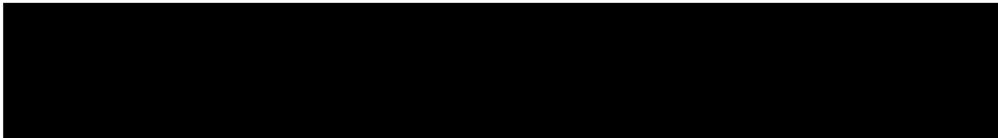
FILE: WAC 04 239 52559 Office: CALIFORNIA SERVICE CENTER Date:

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 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 a clothing manufacturing company that 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 director denied the petition based on a determination that the position was not a specialty occupation.

On appeal the petitioner asserts, through counsel, that the proffered position's duties are specialty occupation duties of an accountant, as set forth in the *Occupational Outlook Handbook (Handbook)*. The petitioner asserts that it has a bona fide need for an accountant, and asks that the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) be approved.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE and additional documentation; (4) the director's denial letter; and (5) Form I-290B, Notice of Appeal to the Administrative Appeals Unit, with counsel's brief. The AAO reviewed the record in its entirety before rendering 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 position it is offering to the beneficiary meets 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 in regulations 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.

U.S. 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.

In order 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 (5th 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 present matter, the petitioner asserts that it seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129 and letter of support, and the petitioner’s response to the director’s RFE containing a description of the petitioner’s business and a description of the proffered position duties and responsibilities. As described by the petitioner, the proffered position would require the beneficiary to: analyze and compile financial information for account entry purposes in order to summarize the current and projected company financial position (30% of the beneficiary’s time); examine accounts, record and compute and prepare accurate tax returns (20% of the beneficiary’s time); analyze financial operations, trends and costs, prepare budget and project future revenues and expenses (20% of the beneficiary’s time); audit contracts, orders and vouchers, and prepare individual transaction reports (20% of the beneficiary’s time); and establish, modify and document accounting control procedures (10% of the beneficiary’s time). Specifically, the petitioner asserts that the proffered position would require the beneficiary to perform the following duties:

- Analyze and compile financial information to prepare entries to accounts;
- Document business transactions;
- Prepare balance sheets, profit and loss statements and other reports to summarize current and projected company financial position;
- Consolidate accounting data for preparation of financial statements;
- Complete general ledger postings and assist with monthly closings;
- Prepare monthly financial statements and related reports for management;
- Reconcile balance sheet accounts on a periodic basis;
- Review and analyze profit and loss statements;
- Prepare various analysis and cash flow analysis;

- Prepare reports required by governmental and regulatory agencies;
- Assist with preparation of annual audits;
- Undertake annual budgeting and forecasting process;
- Undertake special projects;
- Establish, modify and document implementation of accounting control procedures;
- Analyze past and present financial operation trends and costs, and estimated and realized revenues to prepare budget and project future revenues and expenses;
- Interpret budgets to management and advise management on use of resources and budget forecasts;
- Performance evaluation, cost and asset management, strategic planning and new product development.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first 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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that 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)).

The director found that the petitioner failed to establish its business would utilize the beneficiary in an accountant capacity. Counsel counters that the proffered position duties are those of a specialty occupation accountant, and that the petitioner has a bona fide need for an accountant. To determine whether 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 accountants. The *Handbook* provides on page 70, that there are four major fields of accounting: public, management and government accounting and internal auditing. The accounting field containing the duties most closely related to the described proffered position duties is management accounting. The *Handbook* provides that:

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 their 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 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 *Handbook* states on page 71 that most accountant positions require at least a bachelor's degree in accounting or a related field. However, the *Handbook's* discussion of the occupation of accountants on page 72 additionally reflects that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

[M]any 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.

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

The *Handbook's* description of bookkeeping, accounting, and auditing clerks states on pages 434-435 that:

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 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.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts. . . .

[E]ntry-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.

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.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks . . . may review invoices and statements to ensure that all information is accurate and complete, and they may reconcile computer reports with operating reports.

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. . . .

The *Handbook*, at page 435, reflects that the educational requirement for bookkeeping, accounting and auditing clerks is a high school or associate degree. A bachelor's degree is rarely required.

It is noted that the AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. In the present matter, the AAO finds that the duties of the proffered position as listed by the petitioner, are generic and provide no meaningful description of the specific tasks that the beneficiary would perform for the petitioner on a daily basis, or of the beneficiary's duties as they relate to the petitioner's business.

The AAO notes that the present record contains no organizational structure, or financial or operational information for the petitioner's business. The tax information contained in the record fails to demonstrate the complexity of the accounting duties to be performed by the beneficiary.

Counsel indicates on appeal that the petitioner is excused from submitting organizational chart and Form DE-6, employee quarterly wage and withholding federal tax report information. Counsel asserts that the petitioner, "is not filing DE-6 as its employees are independent contractors and are being paid their salary under Form 1099." The AAO notes, however, that the record also does not contain the Form 1099 information referenced by counsel. Counsel asserts further on appeal that the petitioner, "does not maintain an organization chart at present as its operation is not yet too complex and is still manageable by direct hand operation." Counsel indicates that, "supervision is still personally handled by the President-owner of the company. However, it is now in the process of filling up key management positions with professionals, starting with the Accountant, which is considered critical for its continued growth and operation" Counsel states that the petitioner, [REDACTED] is one of three companies owned and operated by the petitioner-owner, and that the net income of the three companies has increased as of 2003. Counsel states further that, "with operations gradually getting more complex and financial transactions increasing in volume, the need for the services of a full time accountant could not be undermined."

While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient 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.

Upon review of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the described proffered position would impose a degree requirement on the beneficiary. The petitioner indicated at the time of filing that it operates three companies involved in clothing manufacturing [REDACTED], and that it has a gross annual income of \$543,000. The record contains the owner of [REDACTED] 2002, Form 1040, Individual Income Tax, and Schedule C, Profit or Loss from Business forms reflecting that the owner is self-employed, that her gross receipts or sales were \$118,276, that her business income was \$51,410, and that she paid no commissions and fees or wages, salaries or tips etc. The record contains no other financial or tax information for [REDACTED]. Furthermore, the record contains no financial, tax, or operational evidence relating to the [REDACTED] and [REDACTED] companies referred to by counsel and the petitioner, and no evidence of record establishes that the petitioner operates three companies or that the petitioner's stated gross income was \$543,000. The evidence additionally fails to establish that the petitioner has filled key management positions with professionals, or that the petitioner has a staff at all. The evidence also fails to establish that the petitioner has a financial operations division, or that the petitioner is involved in financial operations that are of a complex nature.

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)). Moreover, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the present matter, the record lacks evidence to support the contention that the extent or complexity of the petitioner's financial operations establishes the need for an accountant with a level of knowledge that may only be obtained through a baccalaureate degree in accounting or a related field.

Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. See *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

The AAO finds that the petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a "[d]egree 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." The record contains no information from a professional association in the petitioner's industry, or letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position. The petitioner did submit three job vacancy announcements for accountant positions to establish that a bachelor's degree is required in parallel positions within the industry. However, none of the job vacancies state who the employer is, or the type of industry the employer is involved in. The petitioner has thus failed to establish that a degree requirement is common within the petitioner's industry in parallel positions among similar organizations. Furthermore, the relevant educational requirement information contained in the *Handbook* and as reflected on the ACAT website, indicates that, depending on the needs of the employer, the educational requirement for an accountant position ranges from an associate degree or certificate requirement, to a requirement for a bachelor's degree in accounting or a

related field. The petitioner has failed to provide evidence containing a detailed description of the job duties for the proffered position in relation to its business interests. Accordingly, the petitioner has failed to establish the company's position needs, or that the proffered position duties are so complex or unique that they can only be performed by an individual with a degree in a related specialty.

The third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) states that, "the employer normally requires a degree or its equivalent for the position." The petitioner stated that the proffered position is a new position. Accordingly, the record contains no evidence relating to the petitioner's past hiring practices for the proffered position. The petitioner therefore failed to establish that the position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record also fails to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, "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." As previously discussed, the description of the proffered position duties is too generic to determine the specific tasks that the beneficiary would perform on a daily basis within the context of the petitioner's business. This generic description makes it impossible to assess whether the proffered position's duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, as noted above, the *Handbook* and the information on the ACAT website reflects that an accountant position may require less than a baccalaureate degree in a specific field to perform the duties. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the evidence in the record fails to establish any specialized and complex nature of those tasks. Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets any of the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed and the petition denied.

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