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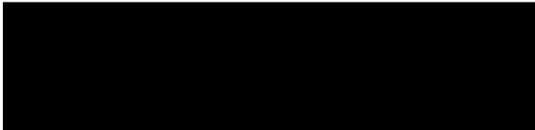
FILE: LIN 05 083 51505 Office: NEBRASKA SERVICE CENTER Date:

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 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 acting director of the Nebraska Service Center denied the nonimmigrant visa petition and a subsequent motion to reopen the proceedings. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The Form I-129 (Petition for Nonimmigrant Worker) describes the petitioner corporation as a recruitment, placement, and immigration specialist that employs five persons and has a gross annual income of \$1,043,997. In order to employ her as an accountant, 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 determined the petitioner failed to establish the position as a specialty occupation. For the reasons discussed below the AAO finds that the director's decision was correct. Accordingly, the appeal shall be dismissed, and the petition shall be denied.

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) counsel's response to the director's RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which [1] 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 [2] 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) consistently 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 an attachment to its May 9, 2005 letter in reply to the RFE, the petitioner provided the following description of the proffered position:

**GENERAL SUMMARY:**

Applies principles of accounting to analyze financial information and prepare financial reports by performing the following duties:

**PRINCIPAL DUTIES AND RESPONSIBILITIES**

- Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions.
- Compiles composite reports from individual reports of subordinates required by management or government agencies.
- Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement and other reports to summarize current and projected company financial position.
- Verifies contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement.

- Establishes, modifies, documents and coordinates implementation of accounting principles and accounting control procedures.
- Devises and implements system for general accounting.
- Determines work procedures, prepares work schedules, and expedites workflow.
- Conducts survey of operations to ascertain needs of the company.
- Sets up classification of accounts and organizes accounting procedures and machine methods support.
- Devises forms and prepares manuals required to guide activities of bookkeeping and clerical personnel who post data and keep records. Adapts conventional accounting and record keeping functions to machine accounting process.

As exemplified in the above list of duties, the petitioner has limited its information about the position and its duties to generic descriptions of general functions that do not establish the concrete matters upon which the beneficiary would work and the substantive accounting issues that she would confront. The same observation applies to the table "Routine Work Schedule of Accountants" that is also appended to the letter of reply to the RFE. No concrete information is provided about any of the business matters upon which the beneficiary would work or about any of the work products expected of him. For example, there is no specific information about the financial information that the beneficiary is to compile and analyze; the accounts with which she would be involved; the financial analysis that she is to apply; the reports that the beneficiary is to prepare or compile; the accounting principles she is to establish, modify, document, and implement. The record contains no concrete information about the operations that the beneficiary would survey in order to ascertain the needs of the company, or about the accounts that the beneficiary would classify. The petitioner does not provide information to illuminate the specific nature of any of the work products listed as "Expected Output" on the "Routine Work Schedule of Accountants" table, which includes such generically stated items as "financial reports," "management reports," "analysis reports," "forecasts and projections," "tax reports," "exception/audit reports," "general accounting system," "policies and procedures," "chart of account entries," "accounting procedures," and "forms and policy manuals." Further, the record is not supplemented with copies of relevant business records of the petitioner to illustrate the specific nature of the accounting work that the beneficiary would perform. Consequently, the record contains insufficient information for the AAO to reasonably ascertain the substantive nature of the beneficiary's work and to determine that it would require the practical and theoretical application of a highly specialized body of accounting knowledge and at least a bachelor's degree, or the equivalent, in accounting or a related specialty, as required by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations.

Counsel's reliance upon the *Handbook's* statement that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field" is misplaced. To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) the petitioner must establish that the particular position under petition – not most accounting positions – requires at least a bachelor's degree or its equivalent in accounting or a related field.

As earlier discussed, the evidence of record fails to provide sufficient information about the particular position and its duties to establish that their performance involves the application of at least a bachelor's degree level of knowledge in accounting or a related specialty. Lacking as it is in specific content, the record fails to establish where the proffered position stands along the educational-requirement continuum of accountant and other jobs that apply accounting knowledge. As indicated in the discussion below, neither the petitioner's designation of the position as accountant nor the record's generalized work descriptions establish that the proffered position is one that normally requires baccalaureate or higher degree, or the equivalent, in accounting or other specialty.

The AAO considered the information on accounting duties as presented in the 2006-2007 *Handbook* sections on accountants and auditors (pages 70-74) and bookkeeping, accounting, and auditing clerks (pages 434-435).<sup>1</sup> The totality of information in these sections establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, junior accountants, and accountant positions performed by persons without a bachelor's degree.

These excerpts illustrate the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

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.

(*Handbook*, page 435)

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 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.

(*Handbook*, page 72)

The *Handbook's* narrative on Accountants and Auditors and the related "Sources of Additional Information" (SAI section) (page 74) indicate that persons may serve as accountants without a bachelor's degree in accounting or a related specialty.

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at [www.stats.bls.gov/oco/](http://www.stats.bls.gov/oco/). The AAO's references are to the 2006-2007 print edition of the *Handbook*.

The *Handbook* states that the Institute of Management Accountants (IMA) confers the Certified Management Accountant (CMA) designation upon persons who pass a four-part examination,<sup>2</sup> agree to meet continuing education requirements, and comply with standards of professional conduct. Applicants must have worked at least 2 years in management accounting and hold a bachelor's degree in any discipline. At its Internet site [www.imanet.org/certification\\_started\\_education.asp](http://www.imanet.org/certification_started_education.asp), IMA states that the bachelor's degree may be "in any area, from an accredited college or university." The *Handbook* also references the Accredited Business Accountant® (ABA) certification awarded by the American Council for Accountancy and Taxation (ACAT).<sup>3</sup> The related Internet site referenced at the *Handbook's* SAI subsection, [www.acatcredentials.org](http://www.acatcredentials.org), states that the ABA is "for practitioners who specialize in the needs of small-to-mid-size businesses and in financial services to individuals and families." 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."<sup>4</sup> "Up to two" of the required years of work experience "may be satisfied through college credit." The Internet site of the Institute of Internal Auditors, [www.theiia.org](http://www.theiia.org), which is also referenced at the SAI subsection of the *Handbook's* section, indicates that a bachelor's degree in any major will qualify a person to sit for its qualifying examination for Certified Internal Auditor®.

In contrast, on the high end of the continuum, National Association of State Boards of Accountancy, accessible on the Internet at [www.naszba.org](http://www.naszba.org), indicates that in order to sit for the Certified Public Accountant (CPA) examination in Missouri, the location of the proffered position, a person must hold the following educational credentials: "a baccalaureate or higher degree, with at least 33 semester hours in accounting (at least 1 course in Auditing and at least 18 semester hours of the accounting courses, must be above the introductory accounting level) [and] 27 semester hours in general business courses (i.e. Marketing, Management, Economics, Finance, etc)." There is no evidence of record that the beneficiary would be applying CPA-level knowledge or, for that matter, any advanced accounting knowledge.

Because the evidence of record fails to establish the specific accounting work that the beneficiary would perform in the context of the petitioner's business, the substantive issues upon which she would work, and the level of highly specialized accounting or accounting-related knowledge that she would apply in the course of her work, the AAO finds that the petitioner has not satisfied 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The record does not provide a basis for the AAO to reasonably conclude that the proffered position is one that normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

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<sup>2</sup> According to the *Handbook*, the CMA exam provides an in-depth measure of competence in areas such as financial statement analysis, working-capital policy, capital structure, valuation issues, and risk management.

<sup>3</sup> At its Internet site ([www.nsaacct.org/acat.asp](http://www.nsaacct.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.

<sup>4</sup> The ACAT Internet site ([www.acatcredentials.org/index](http://www.acatcredentials.org/index)) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong requires the petitioner to establish that the specialized degree requirement is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* 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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. There are no submissions from professional associations, firms, or individuals in the petitioner's industry. The record contains no evidence that satisfies the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The AAO here incorporates its earlier comments about the failure of the record to establish the specific work that the beneficiary would perform in the context of the petitioner's business. The evidence does not convey any aspects of the requisite complexity or uniqueness. Rather, it relates only generalized accounting functions that are not associated with a specific level of education.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), as the evidence of record does not demonstrate a history of normally recruiting and hiring for the proffered position only persons with at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As reflected in this decision's earlier comments about the lack of concrete information about the work that the beneficiary would perform, the record does not develop the duties with sufficient specificity to establish the specialization and complexity required by this criterion.

Beyond the decision of the director, the record does not contain an accurate Labor Condition Application (LCA) certified prior to the date of filing the petition. The petitioner admits that the wage rate that the LCA certified on January 7, 2005 was an erroneous wage rate of \$7.06 per hour for the accurate position. The petitioner filed a new LCA of \$10.28 per hour, which was certified on August 16, 2005, over 6 months after the filing of the petition. The LCA is a necessary and material part of the nonimmigrant worker visa petition. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(B)(1) expressly includes a certified LCA among the documents that a petitioner "shall submit" with an H-1B petition, and the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupation specialty in which the alien(s) will be employed.

Accordingly, a necessary condition for approval of an H-1B visa application is a certified LCA, with accurate information about the pertinent occupation, that was certified prior to the filing of the petition. That condition was not satisfied in this proceeding. The petitioner's attempt to remedy the deficiency by submitting an LCA certified after the filing of the petition is ineffective. A petitioner must establish eligibility at the time of filing a nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). For this additional reason, the petition may not be approved.

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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