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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 137 51199 Office: CALIFORNIA SERVICE CENTER

MAR 08

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 sustained. The petition will be approved.

The petitioner is a company that owns four franchise gasoline filling stations in the Los Angeles, California area. The petitioner seeks to employ the beneficiary as an internal auditor/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 the specialty occupation duties of an accountant, as set forth in the *Occupational Outlook Handbook (Handbook)*. The petitioner asserts that it has a need for an accountant, and requests 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B, Notice of Appeal to the Administrative Appeals Unit (Form I-290B), with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before rendering its decision.

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 the 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 seeks to hire the beneficiary as an accountant. Evidence of the proffered position's duties is contained in the Form I-129 and supporting documentation, and the Form I-290B and supporting documentation. The petitioner asserts that the proffered position would require the beneficiary to perform the following duties:

20% of time – *Analysis of information and development of policies*: gather information in order to be well acquainted with company's fiscal position in relation to economic environment; develop and implement policies and procedures related to the company's accounting and financial system; survey company operations to ascertain accounting needs; analyze operations, trends, costs, revenues, financial commitments, and obligations incurred, to project revenues and expenses; analyze records of financial transactions to determine accuracy and completeness of entries; appraise, evaluate and take an inventory of property and equipment and record description, value, location and other information; audit contracts and prepare reports to substantiate transactions prior to settlement; develop, implement, modify and document budgeting, cost, general, and property accounting systems; develop, maintain and analyze budgets, and prepare periodic reports comparing budgeted costs to actual costs.

20% of time – *Budgeting and forecasting*: develop annual budget and forecast plan, labor, and overhead rates for the plan; assist managers in cost center expense planning and facilitate compiling the information for management; perform monthly forecasts in connection with the sales and operations planning process; conduct regular analysis and comparison of actual performance versus the budget.

20% of time -- *Reporting*: predict revenue and expenditures, and submit reports to management; prepare and analyze balance sheets, profit and loss statements, amortization and

depreciation schedules, and other financial reports; report to management on the petitioner's financial standing, advise about resource utilization, and formulate assumptions for budget forecasts; ensure all transactions are accounted for and processed in a timely manner; ensure month-end close and account reconciliations are completed on time; submit weekly flash reports to management for proper tracking of sales and expenses; compute taxes owed and ensure compliance with tax payment and requirements; oversee preparation and filing of monthly and quarterly tax returns.

20% of time – *Provide consultation and advice*: provide consultation and advice to management regarding accounting and other fiscal matters; update, evaluate and recommend financial plans based on the company needs and market variations and generate reports as required; design and evaluate internal controls and perform agreed-upon investigations and audits; oversee management of fixed assets.

20% of time – *Other duties*: maintain computerized accounting system; recommend computerized upgrades and improvements to present accounting and record keeping functions; train branch managers in accounts receivable and cash receipts process; train all branch personnel in cash handling procedures; ensure that the two bookkeepers perform their duties effectively.

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 had failed to establish its business would utilize the beneficiary in an accountant capacity. The director noted that the petitioner appeared to lack the organizational complexity for an accountant position, and that the petitioner failed to establish that it has bookkeeping, accounting, or auditing clerks to maintain accounting records used by an accountant. The director indicated that many of the bookkeeping, accounting or auditing clerk duties would therefore be part of the proffered position duties, and that rather than an accountant position, the proffered position was similar to that of a bookkeeper, or accounting or auditing clerk. Counsel counters that the proffered position duties are those of a specialty occupation accountant, and that the petitioner has a need for an accountant, as defined in the *Handbook*. 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*. 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.

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. . . .

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

The *Handbook* provides on page 70, that there are four major fields of accounting: public, management, and government accounting, and internal auditing. The *Handbook* indicates 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.

Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations. . . .

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

Through counsel, the petitioner asserts that the duties and responsibilities of the proffered position may only be performed by an internal auditor/accountant, and not a bookkeeper. The petitioner indicates that it needs an accountant to analyze and interpret financial documents and to advise management on financial matters and decisions relating to the operation of the petitioner's four gas stations. The petitioner asserts that hiring an in-house accountant is more cost effective than retaining the services of an outside accountant on an on-need basis. The petitioner asserts further that it is, "currently adapting strategies for . . . expansion programs that will support and enable [the petitioner] . . . to cope with the increase in their workload" and that the beneficiary would be responsible for the "conceptualization, development and implementation of various operational and administrative programs for the petitioner."

The AAO notes that the fact that a position involves some non-specialty-occupation duties does not necessarily preclude it from being a specialty occupation position, and that a position may require a

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.

bachelor's degree or its equivalent in accounting or a related field even if some of its duties, such as bookkeeping or clerical tasks, do not. The information in the *Handbook* does not suggest or imply that accountant positions are incompatible with any particular business field, or that a petitioner's business must have a certain organizational configuration (such as an accounting department and bookkeeping clerks) in order to substantiate the need for an accountant.

The AAO reviews the record for evidence that the petitioner's operations are of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of knowledge that may be obtained only through a baccalaureate degree in accounting or a related field. 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 evidence in the present record reflects that the petitioner owns a franchise of four gasoline filling stations in the Los Angeles, California area, that it employs ten employees, and that its gross annual income in 2004 was approximately \$19 million. Corroborative evidence includes bank transaction and balance summary information for each gas station, as well as California business license, and company and employee tax information. The record additionally contains an organizational chart reflecting that the petitioner's company has a president, one supervisor, four store managers and five cashiers. Upon review of the record, the AAO finds that the petitioner has established that it operates and processes financial transactions from several locations, and that it is thus involved in financial operations that are of a complex nature. The AAO finds further that the described duties of the position are similar to those contained in the *Handbook's* description for a degree-holding accountant. The petitioner has thus established that the proffered position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) - which states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO next turns to the issue of the beneficiary's qualifications. The petitioner indicates that the beneficiary's bachelor's degree in business administration satisfies the specialty education requirement for the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), provides that for 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) purposes, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an Educational Evaluation by The Trustforte Corporation, a credentials evaluation service. The evaluation states that the beneficiary's education in the Philippines is, "[t]he equivalent of a Bachelor of Business Administration Degree from an accredited U.S. college or university." The evaluation adds that the beneficiary "[c]ompleted specialized coursework in her areas of concentration. Commerce. Her coursework included classes and examinations in Business and related subjects." A review of the beneficiary's coursework indicates a sufficient concentration in accounting and related subjects to qualify the beneficiary to perform the duties of the specialty occupation. *See Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner has sustained its burden.

ORDER: The appeal is sustained. The petition is approved.