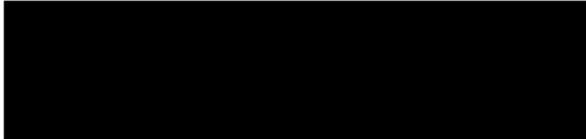


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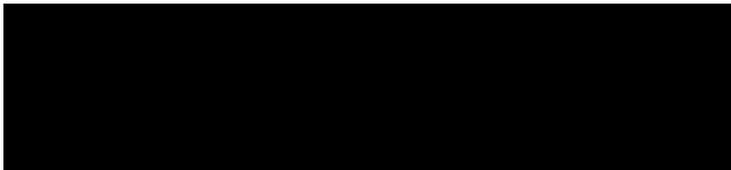
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FILE: EAC 06 139 51317 Office: VERMONT SERVICE CENTER Date: **NOV 20 2007**

IN RE: Petitioner: 
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director 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, a company which provides casting and mold-making for precious metals, seeks to employ the beneficiary as an accountant-auditor. 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 company that provides casting and mold making for precious metals. It was established in 1996 and claims eighteen employees and a gross annual income of \$15,204,102. In its April 2006 letter of support, the petitioner stated that the duties of the proposed position would include analyzing financial data; preparing reports; maintaining financial records of assets and liabilities; invoicing; and payroll.

In its May 2006 response to the director’s request for additional evidence, the petitioner stated that the duties of the proposed position would include updating and maintaining one or more accounting records, including tabulating expenditures, receipts, accountants payable and receivable, and profit and loss; preparing bank deposits by compiling data from cashiers; verifying and balancing receipts; sending cash, checks, or other forms of payment to the bank; payroll; making purchases; preparing invoices; keeping track of overdue accounts; ensuring the completeness and accuracy of data in accounts; coding documents; posting transactions in journals and on computer files; updating files; reviewing computer printouts against manually maintained journals and making necessary corrections; reviewing invoices and monthly statements to ensure that all information is accurate and complete; reconciling daily computer reports with operating daily reports; writing letters; making phone calls to customers or clients; interacting with colleagues; auditing the petitioner’s processes of producing quality staff; and analyzing future earnings and expenses.

The petitioner supplemented its letter in response to the director’s request for additional evidence with a list of additional duties, which included the following: applying the principles of accounting to analyze financial information; preparing financial reports; compiling and analyzing financial information to prepare entries to accounts; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, profit and loss statements, and other reports; auditing contracts, orders, and vouchers; preparing reports to substantiate individual transactions prior to settlement; establishing, modifying, documenting, and coordinating the implementation of accounting and accounting control procedures; devising and implementing manual or computer-based systems for general accounting; preparing weekly payroll and tax payments, and daily bank deposits; verifying and balancing receipts; sending cash, checks, or other forms of payment to the bank; making purchases; preparing invoices; examining and analyzing accounting records to determine the petitioner’s financial status; preparing financial reports concerning the petitioner’s operating

procedures; reviewing data regarding the petitioner's material assets, net worth, liabilities, income, and expenditures; inspecting items in books or original entry to determine whether accepted accounting procedures were followed in recording transactions; counting cash on hand; inspecting notes receivable and payable, negotiable securities, and canceled checks; verifying journal and ledger entries of cash and check payments, purchases, expenses, and trial balances by examining and authenticating inventory items; preparing reports for management concerning the scope of audit, financial conditions found, and sources of, and applications of, funds; supervising the petitioner's billing persons; analyzing the market price changes of precious metals; and offering competent decisions for keeping maximum profit and diminishing expenses.

The petitioner also submitted a May 15, 2006 letter from [REDACTED] C.P.A., the petitioner's accountant since 1996, in response to the director's request for additional evidence. [REDACTED] stated the following:

Up until recently, the Company has relied upon staff bookkeepers but the amount of money passing through the business and the number of separate functions that require proper internal auditing no longer make it possible for a person without a professional background to administer these tasks on a day to day basis. These functions include sales, production, inventory, and customer relations.

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.

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.

The petitioner has stated that its proposed position is that of an accountant-auditor. 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 and internal auditors, the categories 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 *Handbook* states the following with regard to the duties of internal auditors:

Internal auditors verify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. 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 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 junior 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.

The AAO also notes that most of the duties of the proposed position as described by the petitioner in its letter in response to the director's request for additional evidence are typically performed by bookkeeping, accounting and auditing clerks. According to the *Handbook*, bookkeeping clerks record transactions; post debits and credits; produce financial statements; prepare reports and summaries; prepare bank deposits; handle payroll; make purchases; prepare invoices; and keep track of overdue accounts. Accounting clerks post details of transactions in journals and on computer files; post accounts payable and receivable; ensure that payments are up to date; ensure the completeness of data on accounts;

code documents; review invoices and statements to ensure accuracy; and review computer printouts against manually maintained journals to ensure accuracy. Auditing clerks verify records of transactions posted by other employees. The *Handbook* notes that all three types of clerks write letters, make phone calls to customers or clients, and interact with colleagues.

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. 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. The record does not contain tax returns or other documentation corroborating the petitioner’s claimed gross annual income. 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)).

As evident in this decision’s earlier listing of the proposed duties presented in the record, the petitioner has limited its description of the proposed position and the duties comprising it to generalized terms. They relate only functions generic to the field of accounting. Such generalized information relates neither specific work that the beneficiary would perform, concrete matters upon which the work would be performed, or any other indicia of uniqueness, specialization, or complexity to distinguish the proposed position from the range of accounting positions whose performance does not require a baccalaureate level of accounting knowledge.

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,

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.

²According 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.

who are not normally required to possess four-year degrees, normally perform many of the duties of the proposed position, and perform nearly all of the duties described by the petitioner in its own letters. The petitioner has not demonstrated that the duties of the proposed position exceed those of a junior accountant. 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 as 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. However, no such evidence has been submitted. 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 junior 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. No financial documentation was submitted in support of the petition. The evidence of record does not distinguish the duties of the proposed position as more specialized and complex than those of junior 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). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. 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.