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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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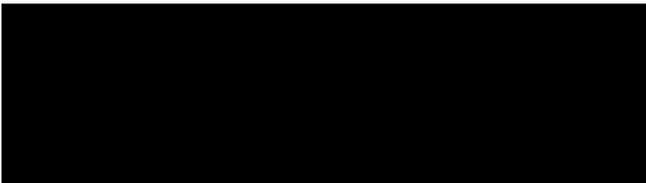
FILE: EAC 06 151 53480 Office: VERMONT SERVICE CENTER Date: **NOV 30 2007**

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 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 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 dental office. The petitioner states that it has six employees and a gross annual income of \$650,000 dollars.¹ It seeks to employ the beneficiary as a financial manager 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 because the proffered position does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation.

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

The first issue to be considered by 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 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

¹ The petitioner did not provide tax records or other financial documentation to establish the scope of its business activities.

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 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 (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.

The petitioner seeks the beneficiary’s services as a financial manager. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s April 6, 2006 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to the evidence the beneficiary would:

- Manage and coordinate all of the petitioner’s accounting activities;
- Examine and analyze accounting and operating procedures;
- Devise and implement systems for general accounting and for recording disbursements, expenses, and tax payments;
- Prepare month-end entries for taxes and depreciation;
- Verify and prepare journal and ledger entries;
- Prepare individual, division and consolidated balance sheets to reflect assets, liabilities, capital, profit and loss during accounting periods;
- Review general ledger accounts and document business transactions;
- Evaluate and examine the petitioner’s internal controls so that corporate records are accurate and controls are adequate to protect against fraud and waste, and assist the company on compensation and other employee benefit issues;
- Perform budgeting tasks;

- Evaluate the petitioner's compliance with financial laws and government regulations;
- Analyze cost and asset management;
- Analyze financial information detailing assets, liabilities and capital and prepare balance sheets, profit and loss statements and other reports to summarize current and projected company financial position;
- Audit contracts, orders and vouchers and prepare reports to substantiate individual transactions prior to settlement;
- Establish, modify, document, and coordinate the implementation of accounting and accounting control procedures;
- Devise and implement manual and computer-based systems for general accounting;
- Review data regarding material assets, net worth, liabilities, capital stock, surplus, income and expenditures;
- Count cash on hand, inspect notes receivable and payable, negotiable securities, and cancelled checks; and
- Report to management concerning the scope of audits, financial conditions found, and the source and application of funds.

The petitioner states that the minimum requirement for entry into the offered position is a bachelor's degree in finance, accounting, business administration or a related field.

In determining whether the proffered position qualifies as a specialty occupation, the AAO turns 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In her denial, the director did not classify the offered position by title, but found that the record did not establish that the duties to be performed were of such complexity as would require a baccalaureate level education to perform them.

The petitioner has stated that the proffered position is that of a financial manager. The AAO does not agree. 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 financial managers. The *Handbook* notes that almost every firm, government agency, and other type of organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement management strategies. Because computers are increasingly used to record and organize data, many financial managers spend their time developing strategies and implementing long-term goals for their organization. For example, the *Handbook* notes that controllers (one type of financial manager) oversee the accounting, audit and budget departments of organizations. Treasurers and finance officers direct an organization's financial goals, objectives and budgets while supervising cash management activities, executing capital-raising strategies to support expansion and dealing with mergers and acquisitions. Credit managers oversee a firm's issuance of credit, establishing crediting rating criteria, determining credit ceilings and monitoring collections. These are not the type of duties or management responsibilities assigned to the beneficiary in this instance.

The duties to be performed by the beneficiary are more closely aligned with those performed by accounting personnel in the petitioner's business environment (i.e., manage and coordinate accounting activities; count cash on hand, inspect notes receivable and payable, negotiable securities, and cancelled checks; devise and implement manual and computer-based systems for general accounting; analyze financial information detailing assets, liabilities and capital and prepare balance sheets, profit and loss statements and other reports to summarize current and projected company financial position; audit contracts, orders and vouchers and prepare reports to substantiate individual transactions prior to settlement; establish, modify, document, and coordinate the implementation of accounting and accounting control procedures; prepare month-end entries for taxes and depreciation; verify and prepare journal and ledger entries; prepare individual, division and consolidated balance sheets to reflect assets, liabilities, capital, profit and loss during accounting periods; and review general ledger accounts and document business transactions. The *Handbook* notes that management accountants, the category of accounting most closely aligned to the duties described by the petitioner:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish the proffered position would impose a degree requirement on the beneficiary. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.²

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.³

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate’s degree in accounting,⁴ the AAO turns to the record for information regarding the nature of the petitioner’s business operations. While the size of a petitioner’s business is normally not a factor in determining the nature of a proffered position, both its level of income and the extent of its business operations are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. The AAO reviews the record for evidence that its operations, are, nevertheless, of

² *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

³ 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.

⁴According to the website for Skyline College, a community college located in San Mateo, CA (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.

sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. In this instance, the record does not contain any documentation detailing the nature and extent of the petitioner's financial operations.

As the record fails to identify the type of financial structure within which the beneficiary would work, the duties of the proffered position may not be established as sufficiently complex to indicate that the petitioner would employ the beneficiary as a management accountant. Instead, as the duties to be performed are only generally described by the petitioner without a detailed discussion of the tasks the beneficiary will actually perform in the petitioner's business environment, they appear more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. Therefore, the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the petitioner asserted that the *Handbook's* discussion of the degree requirement for the occupation of financial managers established the proffered position as a specialty occupation under the criterion's first prong. As previously noted, the duties detailed by the petitioner for the proffered position do not fall within those noted for financial managers in the *Handbook* as asserted by the petitioner, but are more closely aligned with those performed by accounting personnel. Further, the duties are described in only general terms without a detailed discussion of the tasks to be performed by the beneficiary in the petitioner's business environment. The duties could indeed be of such complexity as to require a baccalaureate level education. The record does not establish this premise, however. To the limited extent that they are described in the record, it appears that those duties could be performed by accountants with less than a baccalaureate level education.

Neither the proposed duties – which are so generically and generally described as not to indicate the level of specialized education required for their performance – nor any other evidence of record indicated that the proffered position exceeds that of a junior accountant, employment that the *Handbook* indicates may be performed by individuals who have associate's degrees in accounting or who have an appropriate level of experience. Accordingly, the proffered position may not be established as a specialty occupation under the first prong of the second criterion based on the *Handbook's* discussion of the standard degree requirement for management, public and government accountants. The petitioner has failed to establish the proffered position as a specialty occupation based on the practices in its industry.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) -- the position is so complex or unique that it can be performed only by an individual with a degree. The duties of the proffered position are presented by the petitioner in very general terms which do not permit a detailed analysis of the actual duties the beneficiary would perform in the petitioner's business environment. It is not possible to conclude, from the generalized description of the duties provided by the petitioner, that the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. All of the duties

detailed by the petitioner are routinely performed by junior or associate accountants who do not possess a baccalaureate level education, and by bookkeepers and associated management/accounting personnel. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. In the instant case, the petitioner has submitted no evidence regarding its hiring practices. Accordingly, the record does not establish the proffered position as a specialty requirement under the third criterion.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge than that normally possessed by junior accountants, bookkeepers or other non-degreed accounting personnel. Further, the position, as described, does not appear to represent a combination of jobs that would make the position more unique or complex than those positions normally performed by accounting personnel having less than a baccalaureate level education. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director also determined that the petitioner had failed to establish that the beneficiary's prior work experience was equivalent to a baccalaureate level education from an accredited college or university in the United States. As discussed above, the duties of the proffered position are not those of a specialty occupation. Thus, there is no regulatory requirement that the beneficiary have a bachelor's degree in a specific educational discipline in order to perform the duties of the offered position. Whether the beneficiary is qualified to perform the duties of the proffered position (not a specialty occupation) is within the petitioner's discretion to determine given its business goals and objectives.

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.