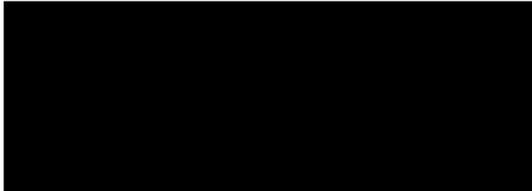


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**U.S. Citizenship
and Immigration
Services**

D2



FILE: WAC 06 022 52131 Office: CALIFORNIA SERVICE CENTER Date: SEP 07 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, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a six-bed residential care facility. The petitioner claims on the Form I-129 that it employs three people and has \$840,000 in gross annual income.¹ It seeks to employ the beneficiary as an accountant. Accordingly, 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 denied the petition determining that the position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 filed October 27, 2005 and supporting documentation; (2) the director's February 23, 2006 request for additional evidence (RFE); (3) prior counsel's May 17, 2006 response to the director's RFE; (4) the director's July 13, 2006 denial letter; and (5) the 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 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.

¹ The petitioner's 2006 first quarter California Forms DE-6, Quarterly Wage and Withholding Report shows the petitioner employed two people. The record does not contain evidence, such as the petitioner's Internal Revenue Service (IRS) Forms 1120, U.S. Corporation Income Tax Return, substantiating its claimed gross annual income.

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.

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.

In an October 25, 2005 letter appended to the petition, as well as an addendum to the Form I-129, the petitioner listed the duties of the proffered position as:

- Prepare consolidated internal and external financial statements by gathering and analyzing information from the general ledger system;
- Maintain and balance an automated consolidation system by inputting data; scheduling required jobs; verifying data;
- Analyze information and options by developing spreadsheet reports; verifying information;
- Prepare general ledger entries by maintaining records and files; reconciling accounts;
- Prepare payments by accruing expenses; assigning account numbers; requesting disbursements; reconciling accounts;
- Develop and implement accounting procedures by analyzing current procedures; recommending changes;

- Answer accounting and financial questions by researching and interpreting data;
- Develop and write internal control procedures;
- Participate in formulation of plans for performing audit assignments;
- Perform process reviews and analysis of internal controls;
- Prepare or revise audit programs to accomplish audit objectives of audit assignments;
- Review findings with affected management during the audit;
- Prepare draft versions of the audit report;
- Prepare federal and state tax returns and related work papers;
- Prepare federal, state and local extensions/vouchers;
- Respond to correspondence and inquiries from taxing authorities;
- Compile and analyze information for tax return preparation purposes;
- Efficiently compile information for federal, state and local reports;
- Verify tax refunds and tax accounts with taxing authorities;
- Perform special tax research projects, utilizing various on-line methods;
- Utilize tax compliance software to complete all filing requirements;
- Prepare quarterly tax provision work papers;
- Protect organization's value by keeping information confidential;
- Update knowledge by participating in educational opportunities; reading professional publications; maintaining personal networks; participating in professional organizations;
- Accomplish accounting and organization mission by completing related results as needed.

In a May 17, 2006 response to the director's RFE, counsel for the petitioner divided the above duties into six categories and indicated the approximate percentage of time the position required for each category. Counsel indicated the successful applicant would allocate 40 percent of time to financial analysis; 30 percent of time to auditing; 10 percent of time to tax matters; 10 percent of time to recording data; 5 percent of time to research; and 5 percent of time on miscellaneous matters. Counsel asserted that accounting was a professional occupation and that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that accounting and auditor positions required a bachelor's degree in accounting or a related field. Counsel also indicated that the Department of Labor assigned the position a JobZone classification of 4 and a Specific Vocation Preparation (SVP) rating of 7. Counsel concluded that the duties described required application of "GAAP," methodological procedures and specialized theoretical knowledge with respect to data collection, classification and compilation, analysis of financial data, and exercise of judgment in preparing reports and making recommendations.

On July 13, 2006, the director denied the petition determining that the duties described are general manager/customer service duties that also include general bookkeeping and administrative clerk type duties. The director found the evidence of record did not establish that the individual performing the duties of the position must have educational training equivalent to a baccalaureate degree. The director concluded that the duties of the position did not meet any of the criteria for classification as a specialty occupation.

On appeal, counsel for the petitioner asserts that the described duties are the typical duties of an accountant as described in the *Handbook* and that the position of accountant requires, at a minimum, a four-year degree. Counsel further states that the Department of Labor's *Dictionary of Occupational Titles (DOT)* lists the position

of accountant with the SVP rating of 8, which is equivalent to four to ten years of education combined with experience. Counsel disagrees with the director's determination that the described duties are general manager/customer service duties that also include general bookkeeping and administrative clerk type duties. Counsel emphasizes that the proffered position includes duties that require financial analysis, a task not included in the duties of a bookkeeping and administrative clerk. Counsel submits job listings for the position of accountant and notes that the job listings require the applicant to have a bachelor's degree; thus establishing that a bachelor's degree is the normal minimum requirement for all accounting positions. Counsel notes that some of the advertising companies may be larger in size and volume of sales than the petitioner, but asserts that a company's size is not relevant to a company's need for an accountant. Counsel contends that the duties of the proffered position are specialized and complex, as the duties require the successful applicant to perform financial analysis which can only be accomplished by a person who has been specifically trained in accounting and "[s]uch training is provided exclusively in college education."²

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the Department of Labor's *Handbook* reports that the industry requires a degree.

The AAO does not find that the record demonstrates that the petitioner would employ the beneficiary in an accounting position that requires a four-year degree in the specific specialty of accounting.

The petitioner has stated that the proffered position is that of an accountant. To confirm that 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 management accountants, the category 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 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 basic accounting principles. However, not all types of employment that require the use and

² The AAO observes that the petitioner has not submitted evidence that the beneficiary has any college education but relies on evaluations of the beneficiary's 18 years of work experience in various positions to support the beneficiary's eligibility to perform the duties of a specialty occupation.

understanding of accounting principles require degreed accountants. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. 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.

The *Handbook* 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.

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

The AAO acknowledges counsel's reference to *DOT* and the SVP level of 8 for an accountant. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as

³ Information provided by the ACAT website [REDACTED] 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.

the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Further, as noted above numerous sources do not report that a degree in accounting or a related specialty is necessary to perform basic accounting duties.

To determine in this matter 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. The AAO acknowledges counsel's assertion that the size of a company is not a factor when determining a petitioner's need for an accountant; however, the AAO disagrees with such a broad inclusive statement. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, like that in the instant matter, the AAO reviews the record for evidence that its operations, are, nevertheless, of 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.

At the time of filing, the petitioner stated that it employed three personnel, although the petitioner's first quarter 2006 California Form DE-6, the only document provided to substantiate its number of employees, indicates it only employed two personnel. The petitioner operates a six-bed residential care facility and claims at the time of filing to have \$840,000 in gross annual income and \$294,000 in net annual income. The AAO observes that the petitioner did not provide any documentary evidence in the form of IRS tax returns to substantiate its claimed income. The record does not contain any evidence, nor does the petitioner claim, that it is expanding its business. The record does not contain any evidence that the petitioner has a complicated financial situation and that its business despite its relatively limited income and small size, has the complexity of financial operations to require that the individual in the proffered position possess a degree in accounting. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not provided any evidence that would elevate the proffered position to one that requires the successful candidate to have studied at the university level and attained a bachelor's degree or higher in accounting.

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.

The AAO acknowledges counsel's claim on appeal that the proffered position requires the successful applicant to perform financial analysis for the petitioner. Counsel for the petitioner, in response to the director's RFE, indicated that the beneficiary would spend 40 percent of her time "[preparing] consolidated internal and external financial statements by gathering and analyzing information from the general ledger system" and [analyzing] information and options by developing spreadsheet reports; verifying information." The petitioner has not provided sufficient specific information regarding these duties, has not explained the analytical nature of the duties, and further has not described how these duties relate to the petitioner's business operations. Upon review of these two duties, the AAO does not find sufficient detail to conclude that these responsibilities would require the theoretical and practical application of a body of highly specialized knowledge only obtained through study resulting in a bachelor's or higher degree in accounting. The duties of the proffered position are not established as those of a degreed accountant. Instead, upon a review of the lengthy description of all of the duties, the AAO finds that the petitioner has described a position that includes responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. As a result, the petitioner has not established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), 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 matter, the petitioner submitted six job announcements for positions labeled accountant. A close review of the descriptions of the duties for the advertised positions and the advertising companies finds that the descriptions are not parallel to the description provided by the petitioner for the proffered position, nor are the companies similar to the petitioner's business or industry. The companies advertising include an insurance business, a manufacturing company, a city, a non-profit agency, and two accounting firms. The job advertisements do not include the businesses' number of employees, level of income, or other information to demonstrate that the businesses are similar to the petitioner's six-bed residential care facility. Neither do the advertising businesses provide descriptions of the job duties that correspond to the petitioner's description of the job duties of the proffered position. The advertisements do not establish that a specific degree requirement would be common for a petitioner who owns a six-bed residential care facility for the elderly. The petitioner has not submitted evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not submitted evidence to establish that the proffered position is so complex or unique that only an individual with a degree can perform the duties of the position. As observed above, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior accountant who is not required to have a four-year degree. The petitioner has not satisfied either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity.

To determine whether a proffered position may be qualified as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether 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. However, the record does not contain any information that would assist in establishing this criterion. Accordingly, as the record does not contain the employment history with regard to the proffered position, the petitioner has not established the proffered position as a specialty occupation on the basis of its normal hiring practices pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 them is usually associated with the attainment of a baccalaureate or higher degree. The AAO again acknowledges counsel's claim on appeal that the duties require the performance of some financial analysis duties and thus the duties of the position are specialized and complex. Again, however, the petitioner has not provided any substantiating detail that its business requires analysis of complex principles, is multifaceted, or presents complicated and intricate problems that require greater knowledge or skill than that normally possessed by junior accountants. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a specialized or complex set of skills beyond those of a junior accountant. As a result, the record also 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).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the appeal will be dismissed.

Beyond the decision of the director, the petitioner has not established the beneficiary is eligible to perform the duties of a specialty occupation. The petitioner in this matter initially presented three evaluations of the beneficiary's 18 years of work experience. Two of the evaluators claim authority to grant college-level credit. However, the record does not contain verifying evidence of this claimed authority, nor does the record contain any evidence that the universities employing these individuals have programs to grant college-level credit for work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In addition, the three evaluators reference the beneficiary's foreign employer's letter describing the beneficiary's work experience as the basis for their conclusions. A review of the beneficiary's foreign employer's letter, however, does not reveal sufficient detail regarding the beneficiary's actual daily duties or the educational level of the beneficiary's peers, subordinates, or supervisors to enable CIS to conclude that the beneficiary gained progressively responsible work experience that included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), and 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record is insufficient to establish the beneficiary's work experience is equivalent to a four-year course of study at a university-level in a specific discipline. The

petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.