

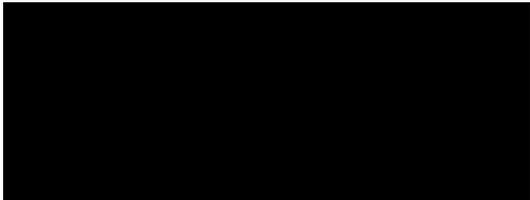
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U.S. Department of Homeland Security
Citizenship and Immigration Services

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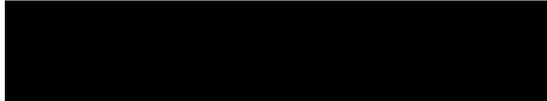
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F.
425 I Street N.W
Washington, DC 20536



NOV 24 2003

File: LIN 02 074 51435 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(1)(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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a dental office with six employees in two different branches, and an approximate gross annual income of \$318,000. It seeks to employ the beneficiary as an accounting and operations coordinator for a three-year period. The director determined that the petitioner had not established that the offered position is a specialty occupation. On appeal, counsel submits a brief, several job postings for accountant positions with other businesses, and information from the Department of Labor's *Occupational Information Network (O*Net)* regarding accountants and administrative services managers.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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.

In the initial I-129 petition, received at the Service Center on December 31, 2001, the petitioner described the duties of the offered position as follows:

- Review, audit and monitor receipts of collections and deposits;
- Account for income and analyze services;
- Prepare financial reports to be submitted to the independent accountant;
- Review disbursement books;
- Review payroll, FICA, and withholding taxes and other payroll deductions for accurate payment of personnel staff;
- Prepare FICA and withholding reports to government agencies;
- Assist the accountant in preparation of various financial reports for budget, control and accounting planning;
- Monitor scheduling of personnel and patients;
- Recruit[,] train and supervise dental assistant, office manager and assistant office manager staff of [sic] daily functions; and review receipt of services.

On February 20, 2002, the director requested additional evidence to establish that the proffered position was a specialty occupation. In response, the petitioner submitted several job announcements for accounting coordinators, the job description of the position of medical manager found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and a statement regarding the proposed job duties.

On June 12, 2002, the director denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper or an accounting clerk with some managerial duties. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks.

On appeal, counsel states that the duties of the offered position are more sophisticated than the duties of a bookkeeper or accounting clerk. Counsel asserts that the proffered position is a hybrid, and that, according to the O*Net, both of its components (accountant and office manager) require a bachelor's degree.

Counsel's statement on appeal is not persuasive. The O*Net provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook* (Handbook) provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, Citizenship and Immigration Services (CIS) is not persuaded by a claim that the proffered position is a specialty occupation based solely on O*NET information.

CIS does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. CIS does not agree with counsel's assertion that the position is, in part, that of accountant, an occupation that would normally require a bachelor's degree in accounting or a related field. The *Handbook* 2002-2003 edition, at page 20 describes the job of a management accountant as follows:

Management accountants - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. . . . They are usually part of executive teams involved in strategic planning or new product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

There is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the

duties of a corporate accountant.

The duties that the petitioner endeavors to have the beneficiary perform are primarily reporting and record-keeping duties, which are similar to the duties that a bookkeeper or accounting clerk would execute in a small business establishment. In contrast to the description of an accountant, page 390 of the *Handbook* describes the positions of a bookkeeper and accounting clerk as follows:

They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . In small establishments, bookkeeping clerks handle all aspects of financial transactions. . . . 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.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a bookkeeping or accounting clerk position rather than a management accounting position. Bookkeeping, routine accounts receivable and payable transactions, and payroll tasks are not duties normally associated with a corporate accountant.

According to the *Handbook* at page 387, the usual requirement for a bookkeeping or accounting clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Inasmuch as the *Handbook* indicates that a high school diploma is sufficient for most bookkeeping and financial clerk positions, the petitioner has not shown that a bachelor's degree or its equivalent is required for this component of the position being offered to the beneficiary.

The AAO now turns to the administrative component of the offered position. The *Handbook* at page 25 describes the educational and other qualifications requirements for administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. . . . For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience.

Inasmuch as the *Handbook* does not state that a bachelor's degree or its equivalent in a specific specialty is a minimum entry requirement for the field of administrative services management, the record does not establish that this facet of the offered position constitutes a specialty occupation.

To the extent that the proffered position appears to be a bookkeeping position with some office management responsibilities, and the *Handbook* indicates no need for a baccalaureate degree for either component of the proffered position, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. In addition the submitted job postings do not constitute evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with baccalaureate degrees in a specific specialty in parallel positions. The record contains no evidence regarding the petitioner's prior qualifications requirements and hiring practices for this position. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.