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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D1

[redacted]

FILE: EAC 03 160 54711 Office: VERMONT SERVICE CENTER Date: DEC 02 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The service center 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 engaged in the business of information technology consultation and marketing, and seeks to employ the beneficiary as an accountant. 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 are 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 proffered position.

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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would perform the following duties: **Analysis of Financial Information** - compile and analyze financial information to prepare entries to general ledger accounts to document business transactions; analyze financial information detailing income, expenses, assets, liabilities, and capital; **Preparation of Financial Reports** - prepare and maintain balance sheets, statements of cash flow, profit and loss statements, payroll tax liability forms and reports, and other reports/returns necessary to summarize current and projected financial position; **Preparation of Cost Estimates** - prepare cost estimates for proposing services to customers and in assessing feasibility of accepting projects at customer offer prices; conduct cost and expense reviews of the petitioner's executive staff to ensure costs and expenses are within projected ranges; **Preparation of Budgets** – analyze and prepare budgetary information; conduct periodic budgetary review with the executive staff; **Maintenance of Accounts and Files** - ensure that the petitioner's accounts are balanced and in proper order; maintain customer account files and ensure that customers are billed accurately on a timely basis; ensure that all legal and accounting principles are complied with; and **Preparation of Payroll** - prepare payroll deduction reports to ensure compliance with state and federal regulations; ensure that paychecks are promptly disbursed to employees; and review the accuracy and current availability of payroll funds. The petitioner requires a minimum of a bachelor's degree in finance, accounting or other related areas for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

> Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. 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 financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.
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> . . . .
>
> More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete . . . .
>
> Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory . . . .
>
> . . . .
>
> The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The duties of the proffered position appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: analyze financial information to prepare entries to general ledger accounts; prepare balance sheets, statements of cash flow, profit and loss, payroll tax liability, and other financial reports; prepare cost estimates and prepare cost and expense reviews; prepare budgets; maintain accounts in proper order for recordkeeping and billing; and prepare payroll. On the other hand, and according to the *Handbook*, management accountants record and analyze financial information of the companies for which they work. Their responsibilities include budgeting, performance evaluation, cost and asset management. They are also usually part of executive teams involved in strategic planning or new-product development. The duties of the proffered position are not of the complexity or strategic importance of those described for management accountants. The duties described are routinely performed in the industry by those with less than a baccalaureate level education. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). In support of that assertion, the petitioner submits copies of numerous job advertisements. Those advertisements, however, were not from organizations similar in nature and scope to that of the petitioner and are, accordingly, of little evidentiary value. Furthermore, the jobs advertised are advertised as "accountant" positions. As stated above, the duties of the proffered position are not those of an accountant, but of bookkeepers, accounting or financial clerks. The petitioner also submits an

opinion letter from [redacted] M.A., a licensed professional counselor. Ms [redacted] indicates that the duties of the proffered position are the same as noted in the *Handbook* for accountants, and as detailed in various job advertisements for accountant positions. Those duties, however, are also performed by bookkeepers, accounting or financial clerks. It is the complexity and sophistication of the duties that determines whether their performance requires the theoretical and practical application of a body of highly specialized knowledge. The duties of the present position, as described by the petitioner in its business environment, do not require application of that specialized knowledge. They are routinely performed by individuals with less than a baccalaureate level education. Ms. Duvall's opinion is, therefore, given little weight and the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner does not assert that it normally requires a degree for the proffered position as it is a new position in the petitioner's organization. The criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*3*) has, accordingly, not been established.

Finally, as previously noted, the duties of the proffered position appear to be routine for bookkeeper, accounting and financial clerks. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*2*) and (*4*).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.