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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: WAC 02 187 51028 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 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 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 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 a corporation that provides accounting, billing, financial management, and management support services to client companies, which are mostly healthcare-related service providers, such as home health agencies, nursing registries, and nursing homes. The petitioner seeks to employ the beneficiary as an accountant. Therefore, it endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) 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 petitioner's failure to establish that the proffered position is 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.

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 proffered position.

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

Comparing the job description evidence to occupational information in the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*), the director found that the petitioner was actually proffering an accounting clerk position, which does not have a minimum hiring requirement of a bachelor's degree or higher, or the equivalent, in a specific specialty. Accordingly, the director denied the petition for failing to establish that the proffered position is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts several grounds for her position that the director's decision "is not supported by the evidence" and "is based on erroneous assumptions, unreasonable and illogical conclusions, and misinterpretations." Counsel maintains that the director: misinterpreted information on the "Job Description" document submitted by the petitioner; was unreasonable in classifying the proffered position as an accounting clerk position; erroneously classified the petitioner as a small organization when he analyzed the proffered position in the light of the *Handbook*; illogically concluded that the petitioner had identified the position as clerical; and failed to consider evidence presented by the petitioner in response to the director's request for additional evidence.

Upon review of the entire record, the AAO has determined that the petitioner did not establish that the proffered position is a specialty occupation within the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). As required on appeal, this was an independent determination. It was based on the AAO's examination of all the evidence of record, and it was made without deferring to the director's findings or reasoning.

The director's denial and the appeal framed one decisive issue for our consideration, namely, whether the evidence of record

establishes that the petitioner has proffered an accountant position. If so, the petition must be granted, because an accountant is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The critical factor in the AAO's decision was the record's depiction of the proposed duties.

The most comprehensive description of the proposed duties appears in the one-page document entitled "Job Description," which lists the general duties, specific duties (with percentage-of-time allocations), and educational requirements for the job title "Staff Accountant." The general duties are stated, "Applies principles of accounting to analyze financial information and prepare financial reports." The specific duties are divided into five areas (each of which is assigned a different percentage of worktime). These are worth quoting because they are almost a verbatim rendition of the accountant duties listed in DOL's *Dictionary of Occupational Titles* (*DOT*) paragraph on "160.162-018 Accountant," which is found among the *DOT* excerpts that counsel provided on appeal.

> Compile and analyze financial information to prepare entries to accounts such as general ledger accounts, documenting business transactions.
>
> Analyze financial information detailing assets, liabilities, and capital and prepare balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position.
>
> Audits contracts, orders, and vouchers and prepares reports to substantiate individual transactions prior to settlement.
>
> Establish, modify, document and coordinate implementation of accounting and accounting control procedures for new client projects.
>
> Device [sic] forms and prepares manuals to guide activities of bookkeeping and clerical personnel who post data and keep records.

Providing a wholesale adoption of the *DOT* description of the general duties of an accountant as the duties of the proffered position is tantamount to expecting CIS to be satisfied with an accountant job title or with a petitioner's general averment that it is definitely proffering an accountant position.

The AAO's actual approach was to search the record for evidence that would illuminate the specific tasks that the beneficiary would have to perform under the general umbrella of the duty description borrowed from the *DOT*.

In this regard, the AAO reviewed the contract between the petitioner and one of its clients, and the sample invoice and billing information submitted by the petitioner. The AAO determined that this information was not sufficient to establish that the proffered position actually requires the theoretical and practical application of accounting knowledge, concepts, and principles to an extent associated with a baccalaureate or higher degree in accounting. To the extent to which they are described, it appears that many of the functions noted in these documents could be performed by bookkeeping, accounting, and auditing clerks as described in the *Handbook,* or by junior accountants without a baccalaureate degree in accounting or a related field.[1] Moreover, the record did not identify which aspects of the business transactions would be handled by the proffered position.

Because the petitioner has failed to establish that the proffered position is actually an accountant position, as it claimed, 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.

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[1] The *Handbook's* chapter on accountants and auditors includes this statement: "Many graduates of junior colleges and business and 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."