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

U.S. Citizenship and Immigration Services

[redacted]

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APR 25 2005

FILE: WAC 03 240 50685 Office: CALIFORNIA SERVICE CENTER Date:

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 director of the service center 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 textile importer and domestic converter that seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel submits a brief.

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 proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing payroll statements; arranging payroll deductions and tax withholding payments; handling accounts receivable and accounts payable; implementing a financial system to establish a more systematic and smooth inventory process; performing audits and prepare financial statements; monitoring financial matters to ensure compliance with tax laws and regulations; advising management about tax strategies and deductions; and supervising the bookkeeper and accounts receivable clerk. The petitioner stated that the proposed position requires a bachelor's degree in either accounting or business administration and experience in accounting.

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position's duties are similar to those of bookkeeping, accounting, and auditing clerks, which are occupations that do not require a baccalaureate degree. The director stated that the proposed duties and stated level of responsibility do not indicate complexity or authority of an accountant, and that in examining whether a titled position is a specialty occupation, the actual duties to be performed are determinative and not the job title. The director found that the evidence did not persuasively show that the job offered could not be performed by a person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the director overlooked the beneficiary's duty to supervise the bookkeeper and accounting clerk, which demonstrates that he will occupy an accountant position, and that the beneficiary will devote forty percent of his time to prepare and analyze balance sheets, a task that only an accountant can perform. A bookkeeper, counsel states, has neither the training to compile a balance sheet, which requires theoretical and practical application of the generally accepted accounting principles (GAAP), nor the knowledge to interpret it. Counsel states that even if some of the beneficiary's duties are associated with those of a bookkeeper, the beneficiary will primarily provide services as an accountant. Citing the court's decision in *Perez vs. Ashcroft*, 236 F. Supp. 2d 899, 904 (N.D. Ill. 2002), counsel states that CIS acts arbitrarily by concluding that because the beneficiary engages in minimal bookkeeping activities he is, therefore, a bookkeeper. Counsel references the *Handbook's* description of an accountant and a bookkeeper, and states that the *Handbook* describes a bookkeeper as recording financial transactions. According to counsel, the bookkeeper does not possess expertise to analyze and prepare reports that would be used to apprise management of current and projected revenues, prepare tax returns, advise about tax strategies, or prepare a balance sheet.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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)).

The petitioner's September 29, 2003 letter stated that the proposed position qualifies as a specialty occupation based on the SVP rating in the DOL's *Dictionary of Occupational Titles* (*DOT*) (4th Ed., Rev. 1991). However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT* and the *O*Net* provide 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 *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The *Handbook* explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook,* management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

Many of the duties described in the *Handbook* do not apply to the proposed position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities or provide

performance evaluation and cost and asset management. In light of this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of a position requiring baccalaureate-level education. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proposed position.

The AAO finds unpersuasive counsel's reference to *Perez*, and his statement that the beneficiary will perform minimal bookkeeping duties. In *Perez*, a religious occupation case, the court noted that a music director position:

> included certain administrative duties--including sound system setting, piano performance and service rehearsals . . . It is difficult to imagine *any* position with any religious organization that would not involve a small amount of administrative duties. Moreover, where being a music director *can* qualify under the rubric of "religious worker," it would be patently arbitrary to treat such directly related work as disqualifying the applicant.

The facts in the instant petition differ significantly from those in *Perez*. The occupation of music director in *Perez* involved a small amount of administrative duties. In the instant petition, many of proposed position's duties are performed by bookkeeping, accounting, auditing and financial clerks. The *Handbook* indicates:

> Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.
>
> More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.
>
> Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .
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> Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The beneficiary will prepare reports that would be used to apprise management of present and projected revenues, handle accounts payable and accounts receivable and payroll, and supervise clerks. Similarly, bookkeeping, accounting, financial, and auditing clerks prepare payroll, handle accounts payable and accounts receivable, verify records of transactions posted by other workers, and produce financial statements

and prepare reports and summaries for supervisors and managers, which they use to make sound business decisions.

The *Handbook* also states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.[1]

The AAO notes that the record reflects that the petitioner's federal income tax returns for the years 2001 and 2002 indicate that it itemized on Form 1120S, in the category entitled "other deductions," a deduction for accounting in the amount of $3,950 and $2087, respectively. The petitioner's September 29, 2003 letter stated:

> Due to the Company's continuing growth and prosperity, it was determined that an in house accountant was required. Due to the intense workload, all applicants for the position were required to possess baccalaureate degrees or their equivalent.

The relatively small tax deduction shown for accounting undermines the above statement made by the petitioner, and strongly suggests that the petitioner would not require the services of a part-time accountant who is employed 20-30 hours each week.

Based on the above discussion, the evidence in the record is insufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations or show that the particular position is so complex or unique that it can be performed only by an individual with a degree, is not satisfied by the furnished job postings. Either the postings do not describe the nature of the employer or they reveal that the employer differs in nature from the petitioner. The Accountants, Inc., Randstad, and Heather Riebold postings do not describe the employer, and Spherion Professional Recruiting Group represents a biotech company. Moreover, as already discussed in this decision, the *Handbook* reveals that the

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1 The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that 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 using tools such as QuickBooks, QuickBooks Pro, or Peachtree, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. The AAO notes that the website information undermines counsel's assertion that financial clerks have neither training nor an understanding about the GAAP.

beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, which are occupations that do not require a baccalaureate degree.

Because the proffered position is newly created, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), the petitioner must establish that the nature of the specific 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. As discussed in this decision, the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, which are occupations that do not require baccalaureate-level education.

As related in the discussion above, the petitioner has failed to establish that the proffered position is 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.