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U.S. Citizenship
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FILE: WAC 02 029 57349 Office: CALIFORNIA SERVICE CENTER Date: MAR 07 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

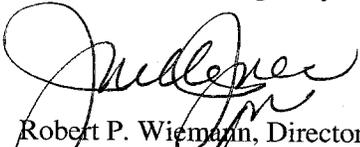
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wieman, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a wholesaler and retailer of cosmetics. It seeks to employ the beneficiary as an accountant and to classify her 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 on the ground that the proffered position did not qualify 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.

As provided in 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 (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying the petition, [REDACTED] the petitioner's president and sole employee, stated that "due to the growth of our company [which was established in 1995 and assertedly had a gross annual income of \$674,671 by 2001] we are in urgent need of an accountant to organize and maintain our accounts with our clients." As described in the petitioner's subsequent response to the RFE, the duties of the proffered position are as follows:

The beneficiary . . . will be responsible for preparing the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements. She will direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers. [The beneficiary] will prepare balance sheets reflecting [the] company's assets, liabilities and capital. She will perform audits and prepare reports. She will inspect company accounting systems to determine their efficiency and protective value. She will also prepare reports of findings and recommendations for company management. [The beneficiary] will set up a computerized accounting system that will retain all of the information necessary to prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports and financial statements. She will also provide tax planning advice.

The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree in accounting or a related field. The beneficiary earned a bachelor of science in accountancy at St. Paul College in Quezon City, the Philippines, on March 20, 1994. According to the petitioner the beneficiary worked as an accountant in the Philippines from 1994 to 2000.

The director found that the position offered to the beneficiary more closely resembled that of a bookkeeping or accounting clerk, than that of an accountant. She based this finding on a comparison of the listed duties of the subject position with the descriptions of bookkeeping/auditing/accounting clerks and accountants in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. In the director's view, "[m]any of the stated duties are those which are normally carried out by bookkeepers and accounting clerks." "Although a few of the duties . . . may be carried out by a professional accountant," the director continued, the record did not establish "that the business had an actual and practical need" for a full-time accountant. In the director's judgement the proffered position did not require the services of an accountant and could be performed by an experienced individual with less than a baccalaureate or higher degree in accountancy or a related specialty field. The evidence of record did not indicate that the petitioner normally required applicants for the position to have baccalaureate or higher degrees in the field, the director determined, and the position's duties and level of responsibility did not indicate a complexity or scope of authority beyond that normally encountered in the field – *i.e.*, of a bookkeeping or accounting clerk. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel argues that the director mischaracterized the proffered position as a bookkeeper or accounting clerk. Counsel contends that the duties and responsibilities of the position mirror the *Handbook's* description of an accountant, an occupation which requires a specialty degree and therefore qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). According to the *Handbook* there are four major fields of accounting – public, management, government, and internal – of which management accountant appears closest to the proffered position in this case. As described at pages 68-69 of the *Handbook*, 2004-05 edition:

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, cost management 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.

By comparison, the *Handbook*, 2004-05 edition, at page 437, describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They

also may monitor loans and accounts, to ensure that payments are up to date. 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 AAO shares the director's view, based on the petitioner's description of the proffered position and the particular duties thereof, that the job is predominantly composed of bookkeeping, auditing and accounting clerk functions. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties of the job are determinative, not its title. The AAO agrees with the director's determination that the proffered position most closely accords with the *Handbook's* description of bookkeeping, accounting, and auditing clerks.

According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position. The proffered position, therefore, does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has submitted a series of job announcements from companies seeking accountants with bachelor's degrees in accounting or a related field. None of the companies appears to be in the same line of business, however, and all of the companies appear to be larger than the petitioner in terms of personnel and business scope. Their need for accounting services may be correspondingly greater than the petitioner's. Thus, the record does not establish that the advertised jobs are parallel positions to the proffered position in this case, or that the advertising companies are similar organizations to the petitioner. Accordingly, the proffered position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting or a related field, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record does not establish that the employer normally requires a degree or its equivalent for the proffered position. As the position is newly created, the petitioner has no hiring history for it.

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in accounting or a related field. Though counsel asserts that the job requires baccalaureate level knowledge, the AAO agrees with the director that the duties of the position – which comprise bookkeeping, auditing, and accounting clerk functions – could be performed by an experienced individual with less than a bachelor's degree in accounting or a related specialty field.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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