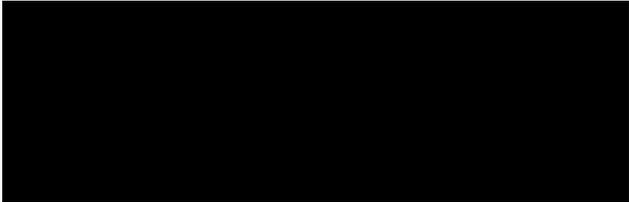




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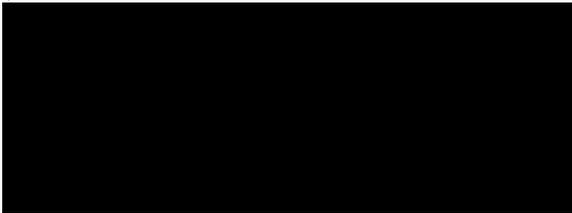
D1

FILE: WAC 03 025 53100 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. Wiemann, 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 describes itself as an importer and exporter of perfumes. It seeks to employ the beneficiary as an accountant and to classify him 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) the appeal (Form I-290B) and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a perfume importer and exporter in business since 1984, seeks the beneficiary's services as a part-time (around 20 hours a week) accountant. As described in a letter accompanying the H-1B petition and in the subsequent response to the RFE, the duties of the position include:

1. Financial Analysis and Management, Forecasting and Budget Planning (8-10 hours/week)

Examine financial information detailing assets, liabilities, and capital.

Analyze financial reports to determine and maintain a record of assets, liabilities, profit and loss, and tax liability.

Coordinate, prepare, and review internal reporting packages, external financial statements, consolidations, corporate accounting, corporate payroll, general ledger maintenance, tax accounting, and external audits.

Prepare balance sheets, profit and loss statements, general ledger postings, and other reports to summarize and interpret the current and projected financial position in areas of income, expenses, earnings, fixed assets, and working capital based on past, present, and expected operations.

Manage the company's fiscal and administrative systems, including operation and maintenance of all computerized and manual accounting records, budget development, and reporting.

Maintain, review, and reconcile accounts.

Develop, implement, and coordinate an annual budget.

Develop and maintain procedures and make appropriate recommendations to ensure compliance with budget projections, aiming to minimize costs without sacrificing product quality.

Provide expertise and apply principles of financial management to company decision-making that could affect the potential profitability and survivability of the company.

Evaluate various statistical and financial data for diverse cost reports.

Engage in various other financial activities of the company. [The beneficiary] will be part of executive team involved in strategic planning or new-product development.

2. Auditing and Inventory Control (5-10 hours/week)

Audit contracts, orders, sales vouchers, and delivery receipts to ensure accuracy.

Prepare comprehensive reports to validate individual transactions prior to settlement.

Based on analysis of prior sales records, calculate the appropriate amount of inventory necessary for peak sales months and the amount that should be kept in stock during the off-season to meet product demand without unnecessary expenditures.

Oversee the preparation of required banking documents such as Letters of Credit on transactions involving importation of perfumes.

Conduct comparative analysis studies between locally purchased products and imported items to measure revenues generated from each type of transaction and identify factors affecting prices based on purchase location.

3. Accounting and Control Procedures (3-5 hours/week)

Develop and maintain a system that tracks assets, expenses, and liabilities.

Examine financial data to determine business growth and tax repercussions.

Update, maintain, and publish financial reports.

Conduct financial studies and recommend modifications to improve [the petitioner's] internal control procedures and existing corporate programs.

On an ongoing basis, develop accounting software that simplifies and improves operations by increasing automation of the accounting and reporting process allowing for effective and convenient monitoring of daily financial transactions, sales, collection, and inventory.

Establish relations with banks and other financial institutes to ensure the company's smooth financial operation.

The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree in accounting or a closely related field. The beneficiary earned a bachelor of science in accountancy at Ataneo de Davao University in the Philippines on March 18, 2000. According to the petitioner the beneficiary worked as an accountant from September 2000 to April 2002 at a restaurant in Davao City, the Philippines.

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. He 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, "not all of the duties of the proffered position are at the level of an Accountant." Instead, the proffered position involved "many of the duties of bookkeepers/accounting clerks (maintain, review, and reconcile accounts, prepare profit and loss statements, general ledger postings)," which the director noted are "occupations that do not require, as a minimum, the attainment of a baccalaureate level degree in accounting." The duties of the proffered position, the director stated, did not indicate a complexity or scope of authority normally required of an accountant. As further evidence that bookkeeping or accounting clerk duties were a major component of the proffered accountant position, the director referred to the petitioner's organizational chart which did not show any separate position for a bookkeeper 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 implicitly found that at least some of the duties of the proffered position were at the level of an accountant and could only be performed by an accountant. This means that the position would require a degree in accounting, thus qualifying it as a specialty occupation under

8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The AAO does not agree with counsel's argument. While some of the tasks of a bookkeeper or accounting clerk involve accounting functions, they are not at a level that requires a degree in the specialty. The petitioner has not established that the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge. The AAO shares the director's view, based on the organizational chart and the job duties described, that bookkeeping and accounting clerk tasks are central to the proffered position. 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:

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.

*Handbook*, 2004-05 edition, at 437. 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. None of the companies appears to be in the

same line of business, however, and none of the advertisements indicates the size of the companies, though most appear to be larger than the petitioner in terms of personnel and business scope. Moreover, all of the advertised positions appear to be for full-time accountants, not a half-time position as the petitioner is offering in this case. 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. The petitioner asserted in its response to the RFE that it employed a [REDACTED] in an accounting position "from 2001 to November 2002," who earned a bachelor of science in commerce, major in accounting, from Collegio de San Juan de Letran in the Philippines. The degree certificate in the record, the AAO notes, identifies the recipient as [REDACTED]. There is no documentary evidence, however, that an individual by either name worked for the petitioner as an accountant in the time frame indicated. Though the accountant was assertedly employed until November 2002, the quarterly wage and withholding report the petitioner submitted to the State of California for the fourth quarter of 2002 does not include either name in its list of employees. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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.

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.