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**U.S. Citizenship
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Services**

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FILE: WAC 03 018 53414 Office: CALIFORNIA SERVICE CENTER Date: DEC 01 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 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 residential care facility for the aged. In order 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 on the basis that the petitioner failed to establish that the proffered position satisfies any of the specialty occupation criteria set forth in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, the director determined that the evidence of record indicates that beneficiary's duties "would be more closely related to those performed by bookkeeping, accounting, or auditing clerks" than persons required to have at least a bachelor's degree in accounting or a related specialty.

On appeal, counsel contends the petitioner is proffering an accountant specialty-occupation position. As will be discussed below, the evidence of record does not support this contention. Therefore, the appeal will be dismissed.

The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B with counsel's annotations, and counsel's brief with its attached exhibits.

The director's ultimate conclusion that the evidence does not provide a basis for approving the petition is correct, but the conceptual framework that he applied is flawed in several respects that might lead to an incorrect outcome under circumstances different than those here. The fact that a position involves some non-specialty-occupation duties does not necessarily preclude it from being a specialty occupation position. In circumstances not present here, a position may require a bachelor's degree or its equivalent in accounting even if some of its duties, such as bookkeeping or clerical tasks, do not. The information in the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not suggest or imply that accountant positions are incompatible with any particular type of business.

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

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The AAO finds that the petitioner has established that the proffered position requires some knowledge of accounting. However, as discussed below, the petitioner has not established that the requisite knowledge is

that attained by at least a bachelor's degree, or its equivalent, in accounting or a related specialty. Therefore, the appeal will be dismissed and the petition will be denied.

According to counsel's April 15, 2004 letter of reply to the RFE, the petitioner operates three assisted living facilities, the total gross annual profits for the year 2003 was approximately \$300,000, and these profits "continue to increase as have the number of elderly care living facilities owned and operated by [the petitioner]." The letter includes these comments about the position and its requirements:

In past years, the assisted living operations have grown in complexity. Accounts exist for three different facilities as well as an increased number of residents. The growth and prosperity of [the petitioner] have altered the nature of the tax implications, accounts receivables, and accounts payable. Moreover, as many of the residents participate in government funding programs such as Medicare and [Medi-Cal], an accountant is needed to evaluate tax implications and to determine the company's eligibility for government funding. Additionally, the petitioning organization proposes to establish additional assisted living facilities in the future and seeks an accountant to manage the financial implications and to impose adequate budgeting and planning strategies to enable expansion of its operations.

Accordingly, [the petitioner] seeks to hire an accountant to evaluate financial statements and tax repercussions of business decisions.

The job duties . . . require the Beneficiary to maintain and organize corporate accounts. More specifically, the duties of the proffered position include preparation of quarterly and yearly tax returns, budget analysis and evaluation of payroll statements and deductions. Furthermore, the accountant must prepare and evaluate financial statements in light of the overall budget and financial goals of the company. Analysis of budget and financial situations is therefore an integral part of the position as is development of a cohesive tax strategy.

The accountant will be responsible for implementing a new system of accounting disbursements, expenses, tax payments and general ledgers. The accountant will assist with corporate financial planning by means of preparing financial statements, evaluating accounts, and appraising the company's assets, liabilities and capital. Moreover, the accountant will assist with income statements and scrutinize purchase orders.

As the duties of the position are dictated by the needs of the company, it is difficult to accurately note the percentage of time to be spent on each accounting duty. For example, during tax season, the accountant will clearly need to devote greater time and attention to preparation of financial statements and conducting financial analysis on a quarterly basis. Throughout the year, the accountant will evaluate growth based on past performance and future projections.

Counsel's brief (at page 4) presents the following table to summarize the proposed duties and related percentages of worktime:

Duties	% of time spent
Recording transactions and balancing accounts – Record money transactions. Record income, expenses. Responsible for billing and accurate statements sent to clients. Record, monitor, and balance accounts.	40%
Monitor accounts and depreciation – Monitor accounts such as inventory of food, cleaning and household supplies, linens, furniture, and office equipment for recording, amortization and depreciation of assets and liabilities.	10%
Compilation and analysis – Compile and analyze financial information to prepare entries for company's accounts. Detail company assets, liabilities, and capital.	10%
Balance sheets, financial statements, payroll – Prepare and analyze balance sheets, profit and loss statements, balance checks, payroll, tax remittances for summary of company's financial status. Prepare proper documentation for income taxes.	20%
Tax Strategies – Advise and recommend tax strategies to management. Advise on advantages and disadvantages of business decisions and transactions.	10%
Business correspondence – Prepare business correspondence with existing and prospective clients regarding financial transactions.	10%
TOTAL	100%

According to the Form I-129, the petitioner employs three people, and it estimates its gross annual income to be \$200,000.

The letter of reply to the RFE asserts, without supporting documentation, that “the needs of the petitioning organization are particularly heightened due to the high volume of accounts, disbursements and other assets or liabilities.” As justification for the requirement for a bachelor's degree in accounting, the letter includes unsubstantiated statements that the accountant “is entrusted with maintaining the financial viability of the company and accounting for assets, corporate and tax liabilities, and the financial health of the organization,” that the “the financial viability of the petitioning organization depends upon the skill and training of the accountant,” and that “it is in the interest of measured and deliberate corporate governance, including that of the Petitioner, to require their accountant to possess, at a minimum, a baccalaureate degree.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. For an accounting position to qualify as a specialty occupation under this criterion, the position must be such that it requires at least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. Accordingly, the AAO considered the information on

accounting duties as presented in the 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438).

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accounting clerks. These excerpts illustrate the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

(*Handbook*, page 428)

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. 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.

(*Handbook*, page 70)

The *Handbook's* subsection "Sources of Additional Information" (page 74) includes the Internet site for the American Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The **Accreditation Council for Accountancy and Taxation (ACAT)** is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

The AAO finds that the evidence of record about the proffered position and its duties does not establish the position as one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty. Also, to the extent that it is described in the record, the proffered position does not comport with any occupation addressed in the *Handbook* that would be cognizable as a specialty occupation under the relevant CIS regulations.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). CIS must determine whether the evidence establishes that performance of the specific duties that comprise the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. What the record reveals about the nature of the specific duties is decisive. A position's title is not persuasive, nor are an employer's hiring standards that exceed the educational level shown to be required by the specific duties.

Neither the *Handbook* nor any evidence of record indicates that only persons with at least a bachelor's degree level of knowledge in accounting or a related specialty are employed in performing the duties delineated in the record, such as: recording transactions; balancing accounts; monitoring accounts and depreciation; compilation and analysis of financial information; preparation of balance sheets, financial statements, and payrolls; development of tax strategies; and the preparation of business correspondence. The evidence of record fails to convey that the beneficiary's specific performance of such generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor's degree or the equivalent in accounting or any other specific specialty. In this regard, it is also noted that the record contains no evidence of: the growth "in complexity" of the petitioner's business operations; the specific accounts with which the beneficiary would work; the "altered nature of the [petitioner's] tax implications, accounts receivable, and accounts payable"; the aspects of government funding programs that require an accountant "to evaluate tax implications and determine the company's eligibility for government funding"; the expansion plans for which it is asserted that an accountant is needed to "manage the financial implications and to impose adequate budgeting and planning strategies, budgeting implications"; the "corporate financial planning" in which the beneficiary would engage; the petitioner's assets, liabilities, and capital that counsel states would require appraisal; the "high volume of accounts disbursements, and other assets and liabilities" asserted by counsel; the "sophisticated financial analysis" and the "complexity of accounts" asserted as requiring a person with a bachelor's degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The job vacancy advertisements comport with the *Handbook's* reporting that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." However, the advertisements do not establish that the particular position proffered here belongs to that group requiring at least a bachelor's degree. The evidence of record does not establish that the advertised positions are substantially similar to the proffered position. On the basis of the limited, generalized information about both the duties of the proffered position and those advertised, it cannot be concluded that the positions' specific accounting matters are substantially similar, or that the associated work requires the same level of accounting knowledge.

The section in the DOL *Dictionary of Occupational Titles (DOT)* on accountants (Exhibit 3) is not persuasive. It does not address the specific position now before the AAO, and it does not offer a method for determining whether the specific performance requirements of a particular job requires the theoretical and practical application of highly specialized accounting knowledge attained by at least a baccalaureate degree or its equivalent in accounting.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. The record does not include any submissions from firms, individuals, or a professional association attesting to recruitment and hiring practices.

The advertisements from other employers are not persuasive. The petitioner has not established that the advertised positions are parallel to the proffered position, as required by the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). A meaningful comparison between the proffered position and those advertised cannot be made, as there is insufficient information about the specific accounting matters that would engage the beneficiary and the candidates for the advertised positions. The three advertisements from employers in the petitioner's industry are too generalized to indicate that they are similar to the petitioner in size and organization, volume of their business, or financial structure. Two of those advertisements state that the

“ideal candidate” should have a bachelor’s degree, but do not restrict the candidate field to degree holders. The job vacancy advertisements submitted on appeal from employers in other industries (Exhibit 4) are beyond the scope of this criterion, which focuses solely on positions in the petitioner’s industry. Further, the advertisements are too few to establish an industry-wide practice.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor’s degree in a specific specialty. As evident in the discussion regarding the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the record does not relate specific work associated with the generalized duties described by the petitioner, and the record does not contain any documents that exemplify the nature of the proposed accounting work. Consequently, there is no evidence of complexity or uniqueness to satisfy the instant criterion, and the petitioner has not established that the proffered position can only be performed by a person with at least a bachelor’s degree in accounting or a related specialty.

As the petitioner has not established a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor. The petitioner’s reliance on its unsubstantiated statements about having previously used the services of an outside accountant with a bachelor’s degree has no evidentiary value. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As indicated in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(4), the record of proceeding lacks evidence of specific duties that would establish such specialization and complexity.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director’s decision shall not be disturbed.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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