

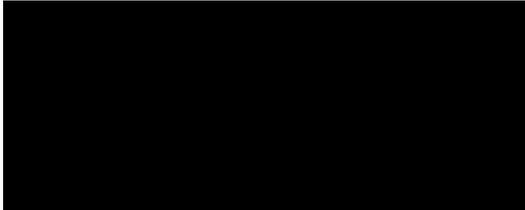


U.S. Citizenship
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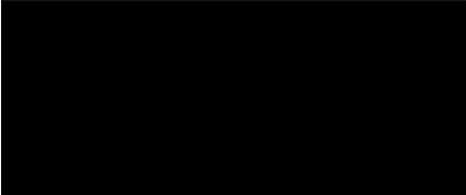


FILE: WAC 04 004 51895 Office: CALIFORNIA SERVICE CENTER Date: **DEC 14 2005**

IN RE: Petitioner:
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:



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 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 computer wholesaler and seeks 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 because the proffered position does not qualify as a specialty occupation. On appeal the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Review daily sales reports of the front desk, inquiry the differences, and report to the CEO and sales managers;
- Review the daily sales, cash receipt, and cash disbursement journal and checks payments and authorize entries;
- Reconcile the daily credit card report and daily sales report, and discuss variances with the credit card company if necessary;
- Review daily inventory status and order inventory from vendors;
- Track purchase customs and duty status;
- Evaluate monthly performance of employees according to the petitioner’s incentive plan, calculate salaries, commissions, employee bonus, income tax and social security tax withholding of each employee and prepare payroll checks and file monthly/quarterly payroll tax returns;
- Compile monthly financial statements, evaluate budget performance, follow-up and control of budget execution, and report budget variances to management;
- Perform statistical analysis of monthly product, customer, sales, and service and report to management;
- Review monthly sales invoices, and reconcile them with daily and monthly statements;

- Evaluate employee's monthly performance, and prepare payroll checks, and explain details of payroll to company employees;
- Design monthly sales promotion plans and schedule with management, and evaluate and analyze cost and financial factors;
- Prepare monthly advertisement budgets and plans;
- Prepare monthly advertisement reports by cost and effect factors, and review and renew advertisement agreements with the newspaper media;
- Compile annual financial statements;
- Design annual bonus and profit sharing plans;
- Calculate annual loyalty payments and evaluate the loyalty contract for the following year;
- Prepare the annual budget and analyze budget follow-up of the prior year;
- Prepare the annual payroll tax returns;
- Review the federal tax return draft prepared by the company CPA;
- Evaluate annual business liability insurance and health policy; and
- Attend the annual manager meetings, and report and analyze the annual budget and financial status to management.

The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those noted for bookkeepers, accounting or financial clerks. In the *Handbook*, the Department Of Labor describes, in part, those duties as follows:

Bookkeeping, accounting, and auditing clerks are an organization's financial record keepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . .

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. . . . They also may handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

....

More advanced accounting clerks total, balance and reconcile billing vouchers, ensure completeness and accuracy of data on accounts, . . . [and] review invoices and statements to ensure that all information is accurate and complete

Financial clerks . . . record all amounts coming into or leaving an organization. . . . Other clerks keep track of a store's inventory

....

The duties of financial clerks vary with the size of the firm. In a small business, a bookkeeper may handle all financial records and transactions, as well as payroll and billing duties. . . .

The duties of the proffered position appear to fall within those listed above. As described by the petitioner, they are fairly generic in nature and do not appear to be of such complexity that they require the theoretical and practical application of a body of highly specialized knowledge. For example, bookkeepers, accounting and financial clerks routinely: review sales reports and report to management; review sales, cash receipt and cash disbursement journals and make entries to same; reconcile credit card and sales reports; review inventory and make orders from vendors; prepare payroll and review employee performance based on company pay/incentive plans; prepare financial statements; assist in preparation and monitoring of budgets; prepare payroll tax returns; and report to managers on company financial matters. On the other hand, and according to the *Handbook*, management accountants record and analyze financial information of the companies for which they work. Their responsibilities include budgeting, performance evaluation, cost and asset management. They are also usually 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. The duties of the proffered position, as described, do not appear to be of the complexity or strategic importance of those described for management accountants. Though degreed accountants may perform some of the same or similar duties in a complex financial environment, the petitioner has not described the duties of the proffered position in terms that would indicate that their performance requires the skills of an accountant with a baccalaureate level education. The duties, as described, are routinely performed in the industry by those with less than a baccalaureate level education. Thus, it cannot be concluded that the duties of the proffered position involve the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* further notes that the majority of financial clerk/bookkeeping positions require at least a high school diploma, but that some college education is becoming increasingly important for occupations requiring knowledge of accounting. An associate degree in business or accounting is often required for accounting and procurement clerks, as well as occupations in bookkeeping.¹ The *Handbook* indicates that many graduates of

¹ According to the website for Skyline College, a community college located in San Mateo, CA (www.skylinecollege.net), 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,

junior colleges and business and correspondence schools can obtain junior accounting positions, and that the most significant source of education or training for tax preparers is moderate on-the-job training. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion, however, the petitioner offers no evidence except reference to the *Handbook* and other Department of Labor publications pertaining to accountants. These references, however, do not establish the referenced criterion as it has been determined that the proffered position is not that of an accountant.

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position as the petitioner is a new company and the position with the company is also a new position. The petitioner has not established the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the proffered position, as described, appear to be routine for bookkeeper, accounting and financial clerks. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties of the position are routinely performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4). The petitioner is a computer wholesaler, and had three employees when the Form I-129 was filed. Further, the petitioner indicates that it had a gross annual income of \$662,442 in the year 2003, with the company having been established in 2002 (the petitioner states that business operations were not actually started until September of 2003). While the size of a business does not determine whether or not the position is a specialty occupation, responsibility for financial record keeping for a company of this size and scope of business differs considerably from one with far larger income, or with multiple branches. The petitioner has not established that the duties of its position require a baccalaureate degree in a specific specialty.

The petitioner states that this beneficiary had been previously approved for an accountant position with another company involving the same owners of the present petitioner, that the companies were virtually identical in scope and purpose, and that the beneficiary's duties were identical with both. The petitioner also makes reference to a memorandum from ██████████ Associate Director for Operations with CIS dated April 23, 2004, pertaining to guidance for adjudicators who process subsequent requests for petition extensions, when questioning other adjudicator's prior petition approvals. That memorandum does not, however, have relevance to this proceeding as the present petition is not a petition for extension of previously

forecasting, budgeting, cost accounting, break even analysis, developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision making.

approved employment, but a petition for new employment with a new employer. Further, the fact that a similar petition under similar circumstances may have been approved does not justify the approval of the present petition under the facts of this case. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. 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 specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an accountant. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

Finally, the petitioner makes reference to the *Dictionary of Occupational Titles* SVP rating assigned to the position of accountant in an effort to qualify the present position as a specialty occupation. As stated above, the proffered position is not that of an accountant, so the SVP rating has no application to the offered position. Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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