



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D 2



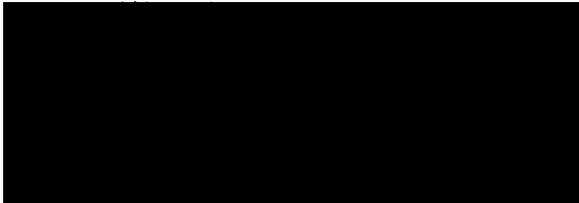
FILE: WAC 04 092 51899 Office: CALIFORNIA SERVICE CENTER Date: DEC 15 2005

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 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 provides skilled nursing services and indicated in the initial petition that it had 17 employees. It seeks to employ the beneficiary as a part-time budget 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)(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.

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 budget 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 analyzing financial information of the petitioner and working with the owner/administrator in preparing budgets, cost and asset management; developing, analyzing and executing budgets to allocate current resources; finding the most efficient distribution of funds and resources and estimating future revenues and expenses; examining, analyzing and seeking new ways to improve efficiency and increasing profits and evaluating the company's priorities and financial resources; developing, maintaining and analyzing budgets and preparing periodic reports comparing budget costs to actual costs; preparing periodic and cash budgets and computing breakeven points; monitoring the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified; recommending new or revised plans and procedures. The petitioner indicated that the beneficiary's bachelor's degree in accounting makes her qualified for the position.

The director requested additional evidence, specifically a more detailed description of the work done including specific job duties, and the percentage of time to be spent on each duty. The director requested evidence that the proffered position meets one of the enumerated criteria. The director requested a copy of the facility license, quarterly wage reports, federal income tax returns, and photographs of the business premises.

In response, counsel asserted that the proffered position qualifies as a specialty occupation and referred to Fragomen's *H-1B Handbook* 2003, and Lawler's *Professionals: A Matter of Degree* 4th Edition, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) 2003 edition, and an advisory opinion letter to support his assertions. The petitioner augmented the job description as follows (1) analyzing financial information detailing assets, liabilities and capital and preparing balance sheet, financial statements, profit and loss statements and other reports to summarize current and projected company financial position using computer software; applying the matching rule to the allocation of expired costs for capital and expenditures and revenue expenditures; accounting for the disposal of depreciable assets; applying matching rule to goodwill, classifying variable costs, semi variable costs and fixed assets; computing the break-even points using contribution margin analysis to estimate level of sales that will produce planned profits; monitoring the budget by reviewing reports and accounting records to determining if allocated funds have been spent as specified to recommend for new or revised plans and procedures (35% of time); (2) analyzing financial information to prepare entries to accounts; applying horizontal analysis, trend analysis and vertical analysis to financial statement; applying ratio analysis to financial statement in the study of the company's liquidity, profitability, long term solvency and market test (25% of time); (3) setting up voucher system to give documentary proof and written authorization for business transactions; establishing a petty cash fund and preparing petty cash vouchers for each expenditure; reimbursing petty cash fund at specific intervals, tracking down losses on uncollectible accounts expense; writing of uncollectible accounts; accounting for cash and short-term investments (15% of time); (4) analyzing the forms, records, procedures, processing methods and reports used by the business; making minor or major revisions where appropriate; integrating control measures throughout the accounting system; advising owner of the tax advantages and disadvantages of certain business decisions (10% of time); (5) maintaining budget systems which provide control and expenditures made to carry out activities, such as advertising and marketing, production maintenance and to project activities of the company; negotiating dental HMO and medical contracts, negotiating fee and preparing feeds schedule for health services (15% of time). Counsel asserted that the complex duties could

only be performed by a person with a baccalaureate degree in accounting. The petitioner provided an organizational chart which indicated that the position of budget accountant and the position of bookkeeper fall under the purview of the CFO who in turns falls under the Administrator. The petitioner indicated that the CFO's duties include overseeing the accounting department. The petitioner provided its DE-6 Forms indicating 21 employees for the quarter ending April 1, 2004. The petitioner provided a copy of its license to provide health services. The petitioner did not submit a copy of its tax returns as requested by the director. Instead, the petitioner submitted a copy of its balance sheets as of December 31, 2002 and December 31, 2003. Additionally, the petitioner submitted a letter from a professor of finance at Seattle Pacific University which indicated that based on a comparison of similar companies and a review of the principal duties of the position, it is the author's opinion that the position typically would require as a minimum a bachelor's degree and the degree most appropriate would be in an accounting or a related field.

The director determined that the proffered position was not a specialty occupation. The director noted that merely citing or paraphrasing a position from the *Handbook* does not establish that the beneficiary will perform work accordingly in a specified occupation. The director noted that the specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. The director found that the petitioner has not demonstrated sufficient organizational complexity to warrant a position of an accountant. The director noted that the petitioner has a staff of seventeen and stated he could not conclude that there is a bona fide position which can be considered a specialty occupation or that the beneficiary will be primarily engaged in performing duties which denote a specialty occupation. The director found that the majority of the duties to be performed were more closely related to those performed by bookkeeping, accounting, or auditing clerks. The director found that the evidence is insufficient to show that the actual duties of the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The director determined that the petitioner failed to establish that the proffered position requires a baccalaureate or higher degree or its equivalent.

On appeal, counsel contends that the petitioner has established that the beneficiary would be performing duties that are specialized and complex which could only be performed by an individual with a bachelor's degree. Counsel refers to the description of the position and asserts that the position requires critical and analytical thinking, judgment and knowledge of accounting and economic principles. Counsel asserts that the petitioner established that it normally requires a degree or its equivalent for the position and that it established that the degree is common to the industry in parallel positions in similar organizations. Additionally, counsel contends that the petitioner has established the complexity of the duties of the position.

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)).

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of the *Handbook* reveals 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, 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.

While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

The *Handbook* states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The petitioner indicated on its Form I-129 that it had 17 employees and \$529,244 in gross annual income. The petitioner did not submit a requested federal income tax return to corroborate the information on the

Form I-129. The balance sheets submitted for December 31, 2002 and December 31, 2003 do not reflect gross yearly income. 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)). The petitioner's level of income, volume of business and number of employees has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The petitioner has not provided evidence that supports its contention that due to the size and complexity of its business the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation.

The *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

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. . . . 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. . . .

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 petitioner stated that the beneficiary would detail assets, liabilities and capital and prepare balance sheets, profit and loss statements, and other reports to summarize and interpret current and projected company financial position. Additionally, the petitioner noted that the duties would include setting up voucher system to give documentary proof and written authorization for business transactions; establishing a petty cash fund and preparing petty cash vouchers for each expenditure; reimbursing petty cash fund at specific intervals, tracking down losses on uncollectible accounts expense; writing off of uncollectible accounts; and accounting for cash and short-term investments.

As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports 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 *Handbook* also states that many graduates of junior colleges and business and correspondence schools, as well as some bookkeepers and accounting clerks, obtain positions as junior accountants.

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish 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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on an opinion letter from a professor of finance at Seattle Pacific University. The author of the letter opines "based on a comparison of similar size companies and a review of the principal duties and responsibilities of the position, the position in question, a budget accountant, typically would require, as a minimum, a bachelor's degree." The author did not indicate the names of the similar companies, the size of the similar companies or where this information was gathered. The record is unclear about the scope of business operations of the petitioner, and the author of the letter does not specify the nature of the operations or the size of the business. The author has not provided corroborating evidence. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. Counsel asserts that the petitioner normally requires a degree for the position and submits an advertisement posting at the petitioner to support his contentions. This evidence is insufficient to establish that the petitioner normally requires a degree for the position.

¹ According to the website for Skyline College, a community college located in San Mateo, California, (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, 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner 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. Counsel contends that the petitioner has established the complexity of the duties of the position in its detailed description. The petitioner contends that it has seventeen employees and a gross annual income of \$529,244. The petitioner's assertions are not substantiated by the facts of the record. The petitioner has not provided any information about the number of clients or patients it treats which would establish the volume of business. 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)). Counsel asserts the opinion letter established the complexity of the duties of the position. The author of the opinion letter asserts that the nature and scope of the petitioner's firm is such that the above mentioned duties are sufficiently complex to require an individual with a bachelor's degree. However, the author did not specifically indicate that he reviewed the petitioner's financial statements or any other corroborating evidence that would support his conclusions. As discussed above, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Upon review of the record, the petitioner has not documented the duties of the proffered position in relation to the nature of its business and many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.