



U.S. Citizenship
and Immigration
Services

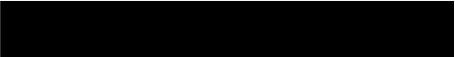
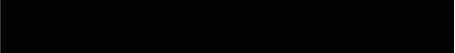
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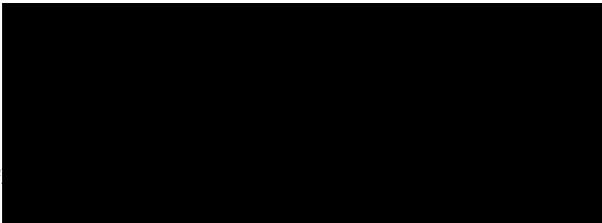
DZ

FILE: WAC 04 038 51126 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 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

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 engaged in the manufacturing, importing and distributing of wireless accessories and parts and seeks to extend the employment of the beneficiary as a full-time 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 states that the proffered position is 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.

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) counsel'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 full-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail continuing devising, implementing and maintaining a general accounting system; being responsible for preparation of the company's financial statements; preparing, analyzing and verifying the quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports and financial statements; handling the preparation of the company's monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information; detailing the company assets, liabilities, and capital and providing tax planning advice; reviewing finances and current taxes and devising a long range tax plan and recommending ways to reduce taxes; advising and recommending tax strategies, advantages, and disadvantages of certain business decisions or transactions; devising a financial system; preparing balance sheets, profit and loss statements, necessary checks, payroll, tax remittances, and other reports to summarize the company's current and projected financial position; modifying and coordinating the implementation of accounting and accounting control procedures; monitoring the company's budgeting; performance evaluation, cost and asset management; preparing company's letter correspondence with existing and prospective clients regarding transactions, financing and billing statements; analyzing all transactions; operating computerized accounting system; preparing monthly profit and loss reports and financial statements; completing record keeping and analytical tasks on a daily basis; completing quarterly reports over a period of thirty days and completing yearly reports over a period of sixty days; and completing record keeping of expenses, disbursements and general ledger weekly.

The petitioner indicated that the beneficiary is qualified for the position and has the equivalent of a bachelor's degree in business administration. The petitioner described the accounting related courses completed by the beneficiary and stated that the combination of education and employment experience provides the beneficiary with the knowledge to perform the duties of the position.

The director requested additional evidence to establish that the proffered position qualifies as a specialty occupation. The director requested a more detailed description of the petitioner's business organization including copies of federal tax returns, state tax returns, quarterly wage reports, payroll summaries and an organizational chart. In response, counsel for the petitioner refers to a memorandum issued on April 23, 2004, by William R. Yates, Associate Director for Operations, as support for her assertion that a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference. Counsel asserted that the proffered position is a specialty occupation and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and noted that the *Handbook* indicated that a bachelor's degree is normally the minimum requirement for the position of accountant. Counsel noted that the petitioner prefers to hire individuals with baccalaureate degrees for accountant positions and explained that the petitioner currently employs five people performing accounting work. The petitioner submitted a copy of its Form 1120S federal income tax return which indicated gross receipts or sales of \$8,903,766 and salaries or wages of \$1,069,917. The petitioner submitted a copy of its 2001 Federal Income Tax Return which indicated gross sales of \$18,938,313. The petitioner submitted copies of its Forms DE-6 which indicated 41 employees. The petitioner submitted an organizational chart which included the following positions: an office/finance manager, finance [sic], credit manager, accounting supervisor, and four accountants.

The director determined that the proffered position was not a specialty occupation. Referring to the *Handbook*, the director noted that some of the duties described by the petitioner appear to reflect some of those performed by an accountant and a bookkeeper. The director stated that if the petitioner gives the title of accountant to an employee who performs some accounting duties but is also performing basic bookkeeping and accounting clerk duties, then CIS cannot consider the proffered position as a specialty occupation, as an auditor or accountant would not include bookkeeping and/or clerical accounting duties as well. The director noted that the petitioner indicated that it had four accounting positions and one accounting supervisor. The director noted that the petitioner has no bookkeepers or accounting clerks in its accounting department and that this indicates that there is no one to perform the most basic accounting clerical and bookkeeping duties.

Additionally, the director found that that the petitioning entity is not a business with operations of a scale or complexity that would require the services of a full- or part-time accountant. The director found that the record is insufficient to establish that the duties include complex or advanced accounting such as regular preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant. The director stated that the record 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. Further, the director acknowledged that CIS previously approved the beneficiary's H-1B status; however, a prior approval does not obligate CIS to approve a subsequent petition or relieve the petitioner of providing sufficient documentation to establish current eligibility.

On appeal, counsel notes that the director indicated that the position of accountant qualifies as a specialty occupation. Counsel notes that the *Handbook* indicates that a bachelor's degree in accounting or a related field is the minimum requirement for entry into the position. Counsel contends that the proposed duties are those of an accountant and not a bookkeeper. On appeal, counsel explains that rather than employ an accounting clerk, the petitioner has decided to have the accountant record and maintain the company's financial records as an incidental part of his job responsibilities. Counsel asserts that the director ignored the petitioner's actual size and income. Counsel contends that the proffered position is that of an accountant and that the majority of the duties are accounting duties and not bookkeeping duties.

The AAO does not agree. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., an accountant performs review, analysis and reporting of the petitioner's accounting records or devises financial strategies. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

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, 1192 (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.

Turning to the *Handbook*, a review of it 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.

Very few of the duties described in the *Handbook* apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities; or be involved in budgeting, performance evaluation, cost management, and asset management. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level of an accountant. Consequently, a bachelor's degree in accounting or a related field — which the DOL states is required for a management accountant — would not be required for the proffered position.

The petitioner indicated it is a distributor of wireless accessories. The petitioner had gross annual receipts or sales of \$8,903,766 as indicated in its 2002 Form 1120 Federal Income Tax Return. The Form I-129 indicates that it has 50 employees and gross annual income of \$20,000,000. Counsel states that the petitioner's gross annual sales are \$20 million, yet the petitioner did not provide evidence to establish that amount. The petitioner's most recent tax return was for less than half the amount indicated on the Form I-129. 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 petitioner's level of income, number of employees and complexity of transactions has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The organizational chart indicates one accounting supervisor and four accountants, which is more than 10% of its staff. However, the petitioner has not provided evidence that supports its contention that due to the size and complexity of its business that the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty. The petitioner has provided no evidence of the multiplicity or types of business transactions that would support its employment of a full-time accountant. 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).

Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. This statement is not persuasive. The *Handbook* reveals that the director properly concluded 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 recordkeepers. 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 will be responsible for "operating computerized accounting system; preparing quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports and financial statements; completing record keeping and analytical tasks on a daily basis; completing quarterly reports over a period of thirty days and completing yearly reports over a period of sixty days; and completing record keeping of expenses, disbursements and general ledger weekly" and "preparing company's letter correspondence with existing and prospective clients regarding transactions, financing and billing statements." These duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports. 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

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, an employer may show that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that this particular position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the petitioner submitted sufficient documentation establishing that a baccalaureate or higher degree is normally required for entry into the position of an accountant. The petitioner submitted internet job postings from various companies. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or the degree requirement is different. For example, Dunkin Donuts Distribution Center indicates that an associate's degree is sufficient for the position of a staff accountant. DSN Electronics provides chemical solutions for the semi-conductor industry. Win Stuff/Good Stuff, LLC is a vending company. Counsel asserts that most of the ads submitted refer to wholesale companies that supply electronic products similar to the petitioner's business operations. The job listings do not support this assertion.

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.

The petitioner has not established that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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

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.

associated with the attainment of a baccalaureate or higher degree. The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests, an electronics wholesaler with a current staff of four accountants, an accounting supervisor, and an overall staff of forty-one. It cannot be concluded 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. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks – positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.