U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 04 039 53308 Office: CALIFORNIA SERVICE CENTER Date: JUN 15 2005

IN RE: Petitioner: [redacted]
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:

[redacted]

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 an international freight forwarding company. It seeks to employ the beneficiary as an accountant and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief indicating 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)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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;
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> *(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 supporting documentation. 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:

- Compile and analyze financial information using software solutions for documenting business transactions, logistics expenses, and over viewing entries to accounts such as the general ledger;
- Prepare financial reports showing current and projected financial positions based on empirical data and prepare Excel/Lotus Notes charts and spreadsheets of financial situation for management use;
- Analyze financial information detailing assets, liabilities, and capital for the preparation of balance sheets, profit and loss statements, and other reports;
- Summarize and interpret current and projected financial position for management utilizing generally accepted accounting principles;
- Audit air cargo contracts, orders, vouchers, and prepare reports to substantiate individual transactions prior to settlement;
- Document and assist in the implementation of accounting systems and accounting controls;
- Review reconciliation of bank statements and journal entry updates and adjustments performed by the accounting clerk and ensure they are timely completed;
- Make recommendations regarding the accounting of assets and expenditures;
- Collect sales and tax data and prepare returns;

- Assist in the development and implementation of the annual budget and advise management of deviations or shortfalls from budget projections;

- Audit receipts, accounts payable, and employee compensation time and attendance deductions; and

- Prepare month-end and adjusting journal entries.

The petitioner requires a minimum of a bachelor's degree in accounting 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. . . .
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> 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.
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> . . . .
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> 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 . . . .
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> . . . .
>
> 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: use software to analyze financial information documenting transactions and make entries to accounts; prepare financial reports showing financial position for management; analyze financial information detailing assets, liabilities, and capital for preparation of balance, sheets, profit and loss statements, and other reports; summarize and interpret current and projected financial position using generally

accepted accounting principles; and audit contracts, orders, vouchers, etc. [1] 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 are not of the complexity or strategic importance of those described for management accountants. The duties 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. 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, and in support of that assertion submits copies of job advertisements for accountant positions. Those advertisements, however, are of little evidentiary value as the duties of the proffered position do not appear to be those of an accountant, but of a bookkeeper, accounting and/or financial clerk. Furthermore, two of the five job advertisements presented only desire or prefer an accounting degree, not require one. As such, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner does not assert that it normally requires a degree for the proffered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the duties of the proffered position, as described, 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 are routinely performed in the industry by individuals with

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[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, 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.

less than a baccalaureate level education in accounting or a closely related field. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*2*) or (*4*).

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.