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JUN 22 2005

FILE: WAC 04 060 51393 Office: CALIFORNIA SERVICE CENTER Date:

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 operates as a clothing importer and indicates that it has 17 employees and seeks to employ 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 submits a brief and supporting documents.

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 applying principles of accounting to analyze financial information and prepare financial reports; compiling and analyzing financial information to prepare entries to accounts, such as gender [sic] ledger accounts and documenting business transactions; analyzing financial information detailing assets, liabilities, and capital and prepare balance sheets, profit and loss statement, other reports to summarize current and projected company financial position, using calculator or computer; auditing contracts, orders and vouchers and prepare reports to substantiate individual transactions prior to settlement; establishing, modifying, documenting and coordinating implementation of accounting and accounting control procedures; devising and implementing manual or computer-based system for general accounting and preparing company tax returns. The petitioner stated that the proffered position requires a bachelor degree in accounting, business administration or related education and experience with skills that will enable him to perform his duties.

The director issued a request for evidence, specifically: a more detailed description of the work done including specific job duties, percentage of time to be spent on each duty, and level of responsibility. Additionally, the director requested evidence to establish the legitimacy of the employer such as federal income tax returns, state income tax returns, Form DE-6 quarterly wage reports, a list of all employees and the petitioner's organizational chart.

In response, counsel indicated that the percentage of time spent is evenly spread out for the listed duties and noted that the beneficiary would not supervise any workers. The petitioner submitted an opinion letter from a professor of finance at Seattle Pacific University. In response to the director's request for copies of tax returns, counsel contended that there is no H-1B requirement for the petitioner to submit tax returns. The petitioner submitted the last four quarters of the Form DE-6. The petitioner provided a list of employees and an organizational chart.

The director determined that the proffered position was not a specialty occupation. The director noted the opinion letter submitted by counsel but stated that CIS maintains discretion in using advisory statements. The director referred to the petitioner's organizational chart and noted that no bookkeepers or accounting clerks were listed. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position's duties are similar to those of bookkeeping and accounting clerk positions, occupations that do not require a baccalaureate degree. The director stated that the proposed duties and stated level of responsibility do not indicate complexity or scope of responsibility normally required of an accountant. The director found that the proffered position did not require the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. The evidence of record, the director stated, did not show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the director did not consider all of the evidence and information previously submitted by the petitioner. Counsel refers to the submitted letter written by a professor of finance. The letter indicated that the position required an individual with an accounting degree and that the petitioner's firm is of the size that the duties are sufficiently complex to require an individual with a bachelor's degree.

Counsel contends that the director abused his discretion by summarily disregarding the opinion letter because the director did not give any reasons why the letter was questionable.

Counsel asserts that the industry standard for a position of this scope and complexity is a bachelor's degree. Counsel states that that the "petitioner's firm is of a size (almost \$5 million in gross annual income and 17 full-time employees) that the above mentioned duties are sufficiently complex as to require a bachelor's degree."

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.

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.

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.

Counsel contends that the petitioner is a clothing importer with 17 employees and earns a gross annual income of \$5 million. Counsel states that there are no regulations that require the petitioner to submit tax returns, therefore, the petitioner did not provide any copies. The petitioner has failed to corroborate the statements it made on its Form I-129 as requested by the director. Simply, 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)). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). The petitioner's level of income 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 of its business the proffered duties are so complex and specialized that it is an accounting position and not a bookkeeping position.

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 prepare entries to accounts, such as general ledger accounts and documenting business transactions; audit contracts, orders and vouchers and prepare reports to substantiate individual transactions prior to settlement; prepare financial reports; and devise and implement manual or computer-based system for general accounting. Such duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports, verify records of transactions, reconcile billing vouchers, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll.

Counsel refers to the opinion letter to support his contention that the proffered position is a specialty occupation. Counsel notes the letter indicates the position requires financial analysis, accounting skills and an understanding of accounting systems and budget analysis. 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

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

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.

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. Counsel refers to the opinion letter to support his contention that that particular position is so complex it requires an individual with a degree. The author of the letter indicated that he compared companies of similar sizes and that the position in question would require a bachelor's degree. Upon review of the record, the petitioner has not provided any supporting evidence to document the author's claim. Additionally, the author stated he relied on the petitioner's contention that it grosses \$5 million dollars a year. As stated above, the petitioner has not provided any evidence establishing its income. 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.). 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.

Counsel contends that the petitioner has previously hired an accountant with a bachelor's degree in accounting. However, the petitioner has not provided evidence establishing its prior employment of an accountant such as W-2 forms, employment contracts or the employee's credentials. 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). Therefore, 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 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. 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.

knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision making.

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