



U.S. Citizenship  
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FILE: WAC 04 111 50386 Office: CALIFORNIA SERVICE CENTER Date: OCT 27 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 operates a party supply and rental business and indicated in the initial petition that it had 30 employees. It 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, the petitioner 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 denial letter; and (3) 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; and the company support letter. According to this evidence, the beneficiary would perform duties that entail performing inventory control; preparing and analyzing financial reports of assets, liabilities, profit and loss and maintaining records of tax liabilities and other financial activities with the company; reviewing and reconciling monthly accounts aging reports, cash forecasts and preparing schedules for internal and external audits; applying principles of accounting to analyze financial information and preparing financial reports; performing budget planning; performing cost accounting; performing financial analysis; preparing required management and government reports; compiling and analyzing financial information to prepare entries to accounts; documenting of business transactions; performing analysis of financial information detailing accounts payable, licenses, and taxes; preparing reports to summarize current and projected company accounting positions with reference to scope of responsibility; auditing contracts, orders and vouchers and preparing reports to substantiate individual transactions prior to settlement; and establishing, modifying, documenting and coordinating of implementation of accounting and auditing control procedures. The petitioner indicated that the position required a bachelor's degree in accounting or in a related field.

The director determined that the proffered position was not a specialty occupation. The director noted that some of the duties described by the petitioner appear to be those of an accountant or auditor. However, the director stated that sole reliance on a list of duties resembling those of an accountant taken from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) or other government publications, to establish that the proffered position qualifies as a specialty occupation is misplaced. The director noted that the specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that CIS considers. The director indicated that from the evidence provided, it does not appear that the petitioner has the organizational complexity to certify a position for an accountant. The director determined that although the proffered position required some financial analysis, the actual duties to be performed would be more closely related to those performed by bookkeeping, accounting, or auditing clerks – positions that do not qualify as specialty occupations. The director determined 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 trailing falls short of a baccalaureate degree.

On appeal, counsel contends that the job description submitted by the petitioner compounded with the organizational structure of the company demonstrates that the proffered position is equivalent to an accountant. Counsel asserts that the director failed to issue a request for additional evidence which did not allow the petitioner to clarify any issues. Counsel asserts the petitioner has a gross annual income of \$3 million and 38 employees. Counsel states that the petitioner has a corporate office in San Bernadino, two branch offices in Riverside and one branch office in Colton. Counsel explains that the beneficiary will be utilizing her expertise in general accepted accounting principles (GAAP) and the bookkeepers currently employed by the petitioner will perform the bookkeeping duties. Counsel explains that due to its multiple branch locations, the petitioner finds it imperative to hire a staff accountant who can oversee all the finances of the corporation and synthesize this data into reports. On appeal, counsel asserts that if the director had issued a request for evidence then the petitioner would have provided documentation of its income. On appeal, the petitioner submits an organizational structure, and brochures describing services it offers. The petitioner does not submit copies of its tax returns documenting its income or payroll tax documents to establish the size of its payroll. 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 contends that the sheer number of financial transactions that the petitioner engages in to have a gross income of \$3 million warrants its requirement for a full-time accountant. Counsel asserts that because of its multiple locations, the petitioner finds it necessary to hire an accountant who can synthesize the financial data recorded and maintained by the bookkeepers. Counsel asserts that a bookkeeper and accounting clerk do not possess the requisite knowledge of GAAP to synthesize financial data into reports.

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 that it had 38 employees and grossed \$3 million in receipts or sales. The petitioner's organizational chart indicates that its employees include: president, and four departments: marketing/special projects, administration/personnel, treasury/finance, operations. The petitioner's level of income, number of employees and volume of transactions have 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. 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 *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 perform inventory control; prepare and analyze financial reports of assets, liabilities, profit and loss and maintain records of tax liabilities and other financial activities with the company. The beneficiary would review and reconcile monthly accounts, aging reports, cash forecasts and prepare schedules for internal and external audits. Counsel explains that the beneficiary will be utilizing her expertise in generally accepted accounting principles (GAAP). Counsel asserts that a bookkeeper and accounting clerk do not possess the requisite knowledge of GAAP to synthesize financial data into 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.<sup>1</sup> 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.

The petitioner has not established the second criterion - 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.

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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 asserts the petitioner has a gross annual income of \$3 million and 38 employees. Even though counsel asserts that the petitioner was not afforded the opportunity to document the record because the director did not issue a request for additional evidence, the petitioner has not submitted any documents on appeal to support statements made on the Form I-129 or on appeal. The petitioner does not submit copies of its tax returns documenting its income or payroll tax documents to establish the size of its payroll. 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 that the duties of the proffered position are so specialized and complex that a bachelor's degree is mandatory. Counsel's assertions are not substantiated by the facts of the record. The petitioner operates party rental stores and employs 38 people. Counsel contends that the petitioner generates a multitude of financial transactions. Counsel has not provided any information about the number of rental contracts or business at the various locations it manages which would establish the volume of business. 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). 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.