



U.S. Citizenship
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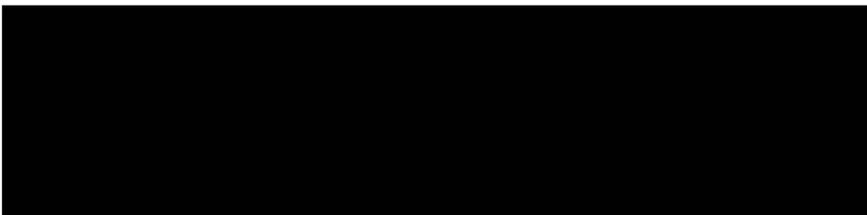
FILE: WAC 04 047 51408 Office: CALIFORNIA SERVICE CENTER Date: **AUG 16 2006**

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 a medical clinic that seeks to employ the beneficiary as an 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits additional evidence.

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 petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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: conferring with staff and examining individual accounting transactions and

identifying areas that need procedural and informational changes; designing and implementing an integrated accounting system that includes computerization; preparing detailed accounting reports including ledgers, journals, and consolidated balance sheets to reflect assets, liabilities, capital, and profit and loss statements; preparing annual and quarterly tax returns and providing support to outside auditors in preparing audited tax returns; compiling data from financial statements; analyzing income and expenses and forecasting a five-year cycle of income and expenses using statistical tools such as regression and variance analysis; preparing the budget using statistical procedures such as correlation and regression analysis; advising management on the petitioner's accounting and financial health and on suitable accounting computer software. The petitioner requires a bachelor's degree in accounting or business administration with an emphasis in accounting.

The director stated that some of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation.

The director explained the two reasons as to why the proposed position differs from the *Handbook's* description of an accountant. **The first reason concerned the petitioner's organizational structure.** The director found that the petitioner does not employ accounting staff to maintain accounting records that are used for analysis and reporting purposes by an accountant. According to the director, absent financial clerks, positions that are not specialty occupations, the beneficiary would perform those duties; and that even if the beneficiary performed some financial analysis, planning, budgeting, or cost accounting, those duties are incidental to the primary duties and are therefore insufficient to establish the proposed position as a specialty occupation. The second reason for the director's finding that the proposed position is not a specialty occupation relates to the field of accounting as described in the *Handbook* and where the beneficiary would be employed. The director determined that the petitioner does not have the organizational complexity, scale of business, or engage in the kind of business that requires the services of a part or full-time accountant. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A), and found that the beneficiary is unqualified for a position as an accountant.

On appeal, the petitioner states that the proposed duties are those of an accountant, and that they do not correspond to a financial clerk. The petitioner states that with the growing complexity of governmental regulations, every industry finds it important and cost-effective to hire an in-house accountant. The petitioner asserts that it previously employed an accountant, and that it has always required a baccalaureate degree in accounting or business administration for an accountant position. The petitioner references submitted job postings to establish that a baccalaureate degree is a normal educational requirement for an accountant in the healthcare industry.

The AAO finds that the evidence of record does not establish that proffered position is a specialty occupation; this decision is based upon consideration of the entire record of proceeding which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (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, and the brief.

The AAO concurs with the director's conclusion that the evidence does not support approving the petition. But the AAO disagrees with the director's reasoning in several respects. A position involving some non-specialty-occupation duties does not necessarily preclude it from being a specialty occupation. In circumstances not present here, a position may require a baccalaureate degree or its equivalent in accounting even if some of its duties, such as bookkeeping or clerical tasks, do not. The *Handbook's* information does not suggest that a particular kind of business would not need an accountant, or that a business must have a certain organizational structure (such as an accounting department and finance clerks) in order to substantiate the need for an accountant.

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 director correctly observed that the *Handbook* explains 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 2006-2007 edition of 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, and cost 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.

The AAO finds that the *Handbook's* description of an accountant is generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, not all accounting is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. Many graduates of junior colleges or business or correspondence schools, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, can obtain junior accounting positions and advance to positions with more responsibilities by demonstrating their accounting skills on the job.

It also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.¹

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the American Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.²

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos144.htm.

² Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting,³ the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

The record of proceeding contains DE-6 records, which reflect the petitioner employs five persons, and federal income tax returns for the year 2002 and 2003 indicating gross receipts or sales of \$590,331 and \$714,680, respectively. This evidence is not sufficient for the AAO to determine the level of accounting knowledge that the beneficiary will perform in handling financial transactions for a small medical clinic. For instance, there is no information about the types and volume of transactions, the nature of the petitioner's financial statements and records, the spectrum of costs to be managed, the extent of the petitioner's financial dealings, the range and scope of the petitioner's financial records, the specific types of data which the beneficiary would analyze, the size of the petitioner's budget, or the number of the petitioner's budget elements. There is no evidence of previous budgets or financial documents illustrating the scope or depth of the petitioner's financial transactions and operations. 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)).

Further, the petitioner's organizational structure of four employees and income of \$714,680 and \$590,331 do not establish that the petitioner's operations have a scope, breath, or depth that would require the services of a baccalaureate degreed accountant. Therefore, the petitioner has failed to demonstrate that its financial operations are of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of accounting knowledge that may only be obtained through a baccalaureate degree in accountancy. Accordingly, the duties of the proffered position are not established as those requiring a person with at least a bachelor's degree in accounting. Therefore, the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

³According 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. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner refers to job postings. The postings are not persuasive as the petitioner is a for-profit entity, and Vista Community Clinic is a nonprofit organization; and the postings do not describe the size and scope of the organizations they represent. Consequently, the AAO cannot determine whether they are similar to the petitioner, a small medical clinic. As such, the postings do not establish that a specific degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As reflected in the discussion under 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence to establish that the proposed duties and the position that they comprise are more complex or unique than accounting positions that can be performed with less than a bachelor's degree or the equivalent in accounting. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) states that the petitioner must normally require a degree or its equivalent for the position. Although the petitioner states that it normally requires a baccalaureate degree in accounting or business administration for the proposed position, there is no evidence in the record that substantiates this statement. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 criterion 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 them is usually associated with the attainment of a baccalaureate or higher degree. As conveyed in the discussion of 8 C.F.R. § 214.2(h)(iii)(A)(1), to the extent that they are described in the record, the proffered duties do not exhibit a level of specialization and complexity sufficient to establish that their performance requires knowledge that is usually associated with at least a bachelor's degree in accounting or a related field. Consequently, the petitioner fails to establish this last criterion at 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.