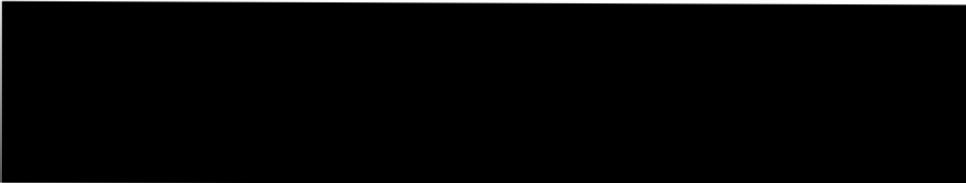


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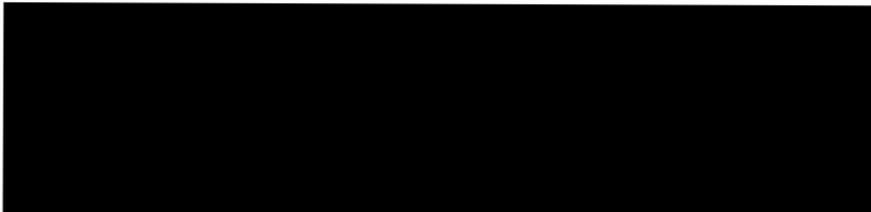
FILE: WAC 04 120 53399 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2006

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 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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an intermediate care facility for developmentally disabled women, with 12 employees and \$447,815 in gross income at the time of filing. It seeks to extend its employment of the beneficiary as an accountant 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 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, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An 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;
- (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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s February 23, 2004 letter in support of the petition; and a list of duties included in counsel’s September 2, 2004 response to the director’s request for evidence. As stated by the petitioner at the time of filing, the duties of the proffered position would require the beneficiary to:

- Analyze and interpret all financial information and transactions relating to the petitioner’s accounts receivable, accounts payable, payroll, balance sheets, income statements and other accounting data used for decision-making purposes;
- Conduct actual/budget variance analysis, review monthly P&L reasonableness, assist in ad hoc projects as needed; analyze various sources of revenues and expenses and submit recommendations to management on how to improve the profit margin;
- Implement the financial reimbursement system required by Medicare and Medicaid; prepare difficult journal entries on reimbursement;
- Prepare schedule of payments such as insurance premiums, mortgages, leases, utilities, maintenance bills, employee compensation and benefit costs, payments on short or long term notes, income taxes, depreciation and amortization;
- Analyze net cash flows in operating assets and liabilities, investments in property equipment and other assets and net cash provided by financing activities, if any;
- Examine the balance sheet in more detail, including intangible assets, current liabilities and contingencies, long-term liabilities, stockholder’s equity, if any, and earnings per share; prepare the monthly statement of consolidated cash flows to update management on the company’s financial status and resources;
- Provide sound advice on internal control and ability to meet all liquidity needs and demands;
- Prepare income and budgetary projections based on current business trends, economic developments and new government pronouncements/standards/programs relevant to the skilled nursing industry; trends in the labor market; discounted future cash flows and projection of revenue; and return on investment and history of capital expenditure;
- Perform internal audit procedures in accordance with the petitioner’s internal audit methodologies;

- Analyze tax-related transactions, assist in formulating tax-planning strategies and perform tax reviews to satisfy tax objectives;
- Prepare all financial statements and footnotes for filing with the Securities and Exchange Commission, lead the preparation and filing of financial statements of affiliate companies and benefit plans and prepare quarterly financial schedules for internal management reporting, and prepare various reports required by various government agencies; and
- Prepare audit and accounting reports required by state, federal and other health regulatory bodies.

On appeal, counsel notes that the above duties are more complex than those listed by the petitioner in its original H-1B petition on behalf of the beneficiary, citing the expansion of the petitioner's business and the "release of more restrictive compliance rules from regulatory health agencies" as the reason for the increased complexity of the position's duties. He submits copies of both the petitioner's original job announcement and May 29, 2001 letter of support as proof of his statements.

The AAO agrees that the duties outlined by the petitioner in the instant case differ significantly from those it described in its prior job posting and letter of support. While the record does not document the more restrictive health regulations referenced by counsel, it does provide evidence of the petitioner's business expansion, specifically the licensing of a third healthcare facility subsequent to the filing of the instant petition. The record offers proof that all three facilities are in operation, and, during the month of August 2004, provided \$84,000 in combined income. Accordingly, the AAO will accept the amended description of the proffered position's duties provided by the petitioner.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 his denial, the director found some of the duties described by the petitioner to reflect the employment of accountants, but determined that most would normally be performed by bookkeepers, accounting and auditing clerks or payroll clerks, as described in the 2004-2005 edition of the *Handbook*. The director also determined that the petitioner did not have the organizational complexity to require the services of an accountant. The AAO does not agree.

The AAO finds the director to have erred in concluding that the petitioner does not have the organizational complexity necessary to employ an accountant. The fact that the petitioner does not have an accounting/bookkeeping staff does not establish that it would not employ the beneficiary to perform the duties of an accountant. Therefore, the AAO withdraws the director's findings in this regard.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.<sup>1</sup>

The AAO finds the above discussion to be 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 employment is performed by degreed accountants. Therefore, the performance of duties requiring accounting knowledge does not establish that the proffered position would impose a degree requirement on the beneficiary. 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.<sup>2</sup>

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation Council for Accountancy and

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

<sup>2</sup> *Ibid.*, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

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.<sup>3</sup>

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,<sup>4</sup> the AAO turns to the record for information regarding the nature of the petitioner’s business operations. While the size and operations of a petitioner’s business are normally not factors in determining the nature of a proffered position, both its level of income and the extent of its business operations 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, like that in the instant case, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or 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 establishes that the petitioner provides healthcare services at three separate facilities. While the income generated by these facilities is relatively modest, the AAO is aware that the highly-regulated nature of the U.S. healthcare industry imposes unique financial requirements on healthcare providers, regardless of their size. In light of the regulatory complexity of the healthcare industry and the multiple facilities for which the beneficiary would have responsibility, the AAO concludes that performance of the proffered position’s duties would require the beneficiary to hold a degree in accounting or another directly-related field. Therefore, the petitioner has 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. The director’s finding to the contrary is withdrawn.

The AAO now turns to a consideration of whether the beneficiary is qualified to perform the duties of the proffered position.

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<sup>3</sup> 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.

<sup>4</sup>According to the website for Skyline College, a community college located in San Mateo, CA ([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. 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 prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in a field of study directly related to accounting. This evidence includes copies of a letter from the registrar of Rizal Memorial Colleges in The Philippines attesting to the beneficiary's 1980 baccalaureate degree in commerce, with a major in accounting; the beneficiary's academic transcripts; and an evaluation of the beneficiary's educational credentials provided by the Global [REDACTED] in Miami Beach, Florida. The GEG evaluation finds the coursework taken by the beneficiary to provide her with the equivalent of a "Bachelor of Business Administration in Accounting" awarded by a regionally accredited college or university in the United States.

Having reviewed the documentation provided by the petitioner, the AAO finds the beneficiary's academic transcripts to support the GEG evaluation. Accordingly, it finds the petitioner to have established that the beneficiary holds a foreign degree that is equivalent of a U.S. baccalaureate degree required by the proffered position, i.e., a degree in business administration, with a major in accounting. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2)

For reasons related in the preceding discussion, the petitioner has established the proffered position as a specialty occupation and the beneficiary as qualified to perform the duties of the position. Accordingly, the petitioner's appeal is sustained.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.