



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

02

FEB 09 2007

FILE: EAC 99 267 51268 Office: VERMONT SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Vermont Service Center on October 4, 1999.¹ On March 14, 2005, the director issued a Notice of Intent to Revoke (NOIR) to the petitioner setting forth grounds for revocation of the petitioner's initial Form I-129, Petitioner for a Nonimmigrant Worker (Form I-129). Counsel for the petitioner responded to the NOIR on April 5, 2005. On August 17, 2005, the director revoked approval of the instant Form I-129 petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a medical office for infants, children and adolescents that seeks to employ the beneficiary as an accountant, and endeavors to classify her 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's determination revoking the Form I-129 petition was made after receiving a memorandum from the U.S. Consulate in the Philippines which questioned whether the position was a bona fide accountant position and whether the proffered position qualified as a specialty occupation. Upon full review of the record, the director determined that the petitioner's position was similar to that of a bookkeeper or accounting clerk, rather than that of an accountant. The director determined further that the proffered position did not qualify as a specialty occupation, and approval of the Form I-129 petition was revoked.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's NOIR; (3) counsel's response to the director's NOIR and additional documentation; (4) the director's revocation letter; and (5) Form I-290B, Notice of Appeal to the Administrative Appeals Unit, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

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), 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)(1) of the Immigration and Nationality Act (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:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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

¹ United States Citizenship and Immigration Services approved a three-year extension petition on October 4, 2002 (EAC 02 286 51156) and subsequently approved two separate one-year extension petitions filed by the petitioner on behalf of the beneficiary. (EAC 05 256 52198 and EAC 06 279 53046).

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

U.S. 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.

In order 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 (5th 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.

In the present matter, the petitioner asserts that it seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129 and letter of support and counsel’s brief on appeal. As described by the petitioner, the proffered position would require the beneficiary to, “assist [the petitioner’s] tax accountant in the preparation of books of account, tax returns, accounts receivable and payable, financial statements and reports.” The record contains no other description or evidence of the proffered position’s duties.

Counsel reiterates the above description of duties on appeal. Counsel additionally asserts that:

[T]he word “assist” the tax accountant is not in conflict with the duties of an “In House” Accountant. As the company’s Accountant, the beneficiary assist *[sic]* the Tax Accountant in the preparation of the Tax Returns for the company, in addition to the other duties as Accountant. We can not *[sic]* assume that the needs of the petitioner/company is *[sic]* only the tax preparation. The Accountant must, just like in any other company in whatever

industry, but more particularly in the practice of Medical profession [*sic*], also prepare financial reports for the company's records and that of the owners or shareholders, creditors and regulatory agencies.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first 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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The director found that the petitioner failed to establish that the proffered position was that of an accountant, or that it qualified as a specialty occupation. 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 accountants. The *Handbook* provides on page 70, that:

Management accountants – also called cost, managerial, industrial, corporate, or private accountants - record 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. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. 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.

The *Handbook* states on page 71 that most accountant positions require at least a bachelor's degree in accounting or a related field. However, the *Handbook's* discussion of the occupation of accountants on page 72 additionally reflects that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

[M]any 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.

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

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

The *Handbook's* description of bookkeeping, accounting, and auditing clerks states on pages 434-435 that:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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 payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. In addition, their responsibilities vary by level or experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks . . . may review invoices and statements to ensure that all information is accurate and complete, and they may reconcile computer reports with operating reports.

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. They also correct or note errors for accountants or other workers to adjust. . . .

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.

The *Handbook*, at page 435, reflects that the educational requirement for bookkeeping, accounting and auditing clerks is a high school diploma or associate degree. A bachelor's degree is rarely required.

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, accounting and auditing clerks, and junior accountants. Upon review of all the information presented by the petitioner, the AAO finds that the petitioner has established that the proffered position is one which normally requires the application of some knowledge of accounting, but not that the requisite knowledge is that of at least a bachelor's degree, or its equivalent, in accounting or a related specialty. Therefore, the proffered position is not a specialty occupation.

The petitioner classified the proffered position as that of an accountant in its Form I-129, and in its Labor Condition Application for H-1B Nonimmigrants (LCA). The AAO finds, however, that the evidence of record does not establish the proffered position as one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty. Rather, to the extent described in the record, the proffered position most closely resembles that of a junior accountant or a bookkeeping or accounting clerk – positions which do not require a degree, or its equivalent, in a specific specialty.

The AAO notes first the record's description of the position duties, stating that the beneficiary's duties are to, "assist [the petitioner's] tax accountant in the preparation of books of account, tax returns, accounts receivable and payable, financial statements and reports." Moreover, the record contains an employment contract reflecting that the beneficiary's position with the company is that of an "assistant accountant." In addition, the record contains a letter prepared and signed by [REDACTED], providing employee payroll information and stating that he is the accountant for [REDACTED] (the petitioner), and listing the beneficiary as assistant accountant. The AAO finds that the combined evidence in the record reflects that the proffered position is not that of a primary, in-house account, as claimed by counsel, but rather that the proffered position is that of an assistant to the petitioner's accountant, or junior accountant or bookkeeper or accounting clerk.

Going on record without supporting documentation is not sufficient to meet 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)). Moreover, the 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). Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a "[d]egree 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." As previously discussed, the petitioner has not established that the proffered position is one for which the *Handbook* reports an

industry-wide requirement for a bachelor's degree in a specific specialty. Furthermore, the record contains no information from a professional association in the petitioner's industry, or letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position.

The petitioner has also failed to establish that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not demonstrate such uniqueness or complexity, but rather indicates that the beneficiary would be operating on no greater level than a junior accountant or bookkeeping and accounting clerk – positions which do not require a bachelor's degree in accounting or a related field.

The third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) states that, “the employer normally requires a degree or its equivalent for the position.” The record contains no evidence relating to the petitioner's past hiring practices for the proffered position. The petitioner therefore failed to establish that the employer has a history of normally requiring at least a baccalaureate degree or its equivalent for the proffered position. Furthermore, the evidence of record reflects that the proffered position duties are associated with less than a bachelor's degree level of accounting knowledge. Accordingly, the petitioner failed to establish that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner states on appeal that the position is made more complex because it is within the medical profession, and the accountant must prepare financial reports for the owners, shareholders, creditors and regulatory agencies. No evidence is submitted of any financial reports that the beneficiary has heretofore prepared for these individuals or entities. The petitioner additionally does not describe the complexity of the reporting that must be done within the medical profession. As previously noted, going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*. In the present matter, the evidence of record does not demonstrate that the proffered position duties are specialized and complex. Rather the evidence indicates that the duties are associated with less than a bachelor's degree level of accounting knowledge.

Counsel indicates that the proffered position is a specialty occupation because CIS previously approved a similar petition for the petitioner on the beneficiary's behalf. However, the present record of proceeding does not contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted in the present matter are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior Form I-129 petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been materially erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597

(Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets any of the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In the present matter, approval of the Form I-129 petition was in violation of paragraph (h) of the cited regulation in that the proffered position does not qualify as a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to overcome the grounds of the director's revocation. The director's decision shall therefore not be disturbed.

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