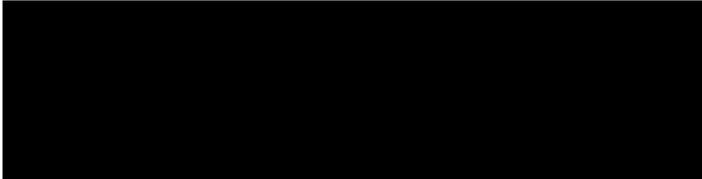




U.S. Citizenship
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Services

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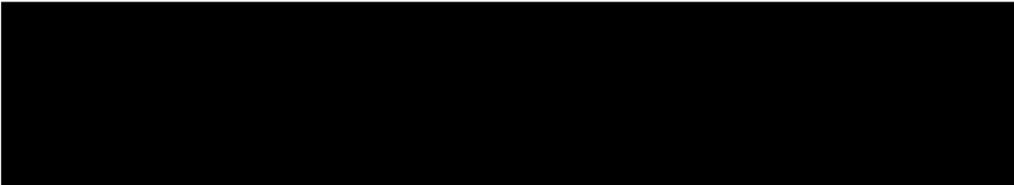
FILE: WAC 04 125 50355 Office: CALIFORNIA SERVICE CENTER Date:

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 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 dismissed. The petition will be denied.

The petitioner is a company that manufactures and distributes hygiene system products. The petitioner seeks to employ 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 director denied the petition based on a determination that the position was not a specialty occupation.

On appeal the petitioner asserts, through counsel, that the proffered position's duties are the specialty occupation duties of an accountant, as set forth in the *Occupational Outlook Handbook (Handbook)*. The petitioner asserts that it has a need for an accountant, and asks that the Form I-129, Petition for a Nonimmigrant Worker (Form I-129) be approved.

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, Notice of Appeal to the Administrative Appeals Unit (Form I-290B), with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before rendering 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 position it is offering to the beneficiary meets 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 in the regulations 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.

U.S. 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.

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 seeks to hire the beneficiary as an accountant. Evidence of the proffered position’s duties is contained in the Form I-129 and supporting documentation, and the Form I-290B and supporting documentation. The petitioner asserts that the proffered position would require the beneficiary to perform the following duties:

30% of time -- Analyze financial information, prepare balance sheet, profit and loss statement, and computerized reports summarizing current and projected company financial position; analyze operations, product costs, revenue and expenditure records, and present analysis to management.

25% of time -- Analyze manufacturing costs and prepare periodic report comparing standard and actual productions costs; study and collect business cost data, analyze data, and prepare computerized reports about data.

25% of time -- Analyze general ledgers; be responsible for A/R and A/P, and prepare bank and account reconciliation; prepare monthly financial statements and reports.

10% of time -- Audit orders and vouchers and calculate costs of goods sold and direct labor costs.

5% of time -- Prepare employee payrolls and calculate monthly tax payments; prepare employment tax quarterly report for EDD.

5% of time -- Input, process and analyze bookkeeping information and data in computerized system.

The record additionally contains a newspaper advertisement for the proffered position indicating that the petitioner advertised the proffered position as an, "Accounting/Office Admin." position, with the following requirements:

Minimum 2 yrs exp. QuickBooks, Microsoft Office Pro, Internet functions [sic] a must. Detail oriented, Organized, Strong follow up skills. Good verbal and written communication skills, English, Chinese preferred. [REDACTED] - Phone [REDACTED] - Fax [REDACTED]

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 had failed to establish its business would utilize the beneficiary in an accountant capacity. Counsel counters that the proffered position duties are those of a specialty occupation accountant, and that the petitioner has a need for a corporate management accountant, as defined in the *Handbook*. 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*:

[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. 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.¹

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. . . .

[E]ntry-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

¹ 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.

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. . . .

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

The AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. In the present matter, the AAO finds that the duties of the proffered position as listed by the petitioner, are without context and generic and provide no meaningful description of the specific tasks that the beneficiary would perform for the petitioner, or of the beneficiary's duties as they relate to the petitioner's business.

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 petitioner states on appeal that it:

[H]as a strong marketing department currently hiring five employees. DMI [the petitioner] also has a project to have an accounting department in place in its organization and by its design to closely support the management and the marketing approach system through professional accounting services to be rendered by a professional corporate management accountant to 'record and analyze the financial information' and collect and analyze accounting data and information for the purpose of 'budgeting, performance evaluation, cost management, and asset management.' This is the reason why DMI is offering the specialty job to hire [REDACTED] [the beneficiary] as a professional accountant to do the work.

With regards to the petitioner's employee and operational structure, the record contains a 2001 U.S. Corporation Income Tax Return, a December 2003 Federal Tax Quarterly Wage Report and an organizational chart. The income tax return reflects that the petitioner had gross receipts or sales in the amount of \$2.2 million, and total income in the amount of \$284,283. The organizational chart reflects that the petitioner has a president, a five staff marketing department, a warehouse staffed by one person, and a newly created, unstaffed accounting department. The quarterly wage report reflects that the petitioner has six employees. It is noted that the organizational chart employee listed for the petitioner's warehouse department is not contained on the petitioner's federal tax quarterly wage report. It is additionally noted that only of two of the marketing department employees contained on the organizational chart are listed in the petitioner's federal

quarterly wage report. Furthermore, three of the employees listed in the petitioner's quarterly wage report are not listed on the petitioner's organizational chart, and the record contains no information relating to their job titles or functions within the company.

Upon review of the evidence contained in the record, the AAO finds that the petitioner has failed to establish that the described proffered position would impose a degree requirement on the beneficiary. The evidence fails to establish that the petitioner has an accounting or marketing department. The evidence also fails to establish that the petitioner has a financial operations division, or that the petitioner is involved in financial operations that are of a complex nature. Furthermore, the AAO notes that the "Accounting/Office Admin" job announcement advertised by the petitioner has no educational requirement, does not mention an accounting or financial operation division, and specifies none of the duties set forth by the petitioner in its Form I-129 or on appeal.

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). In the present matter, the record lacks evidence to support the contention that the extent or complexity of the petitioner's financial operations establishes the need for an accountant with a level of knowledge that may only be obtained through a baccalaureate degree in accounting or a related field. Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. See *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000).

The AAO finds that 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." 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 did submit several job vacancy announcements for accountant positions to establish that a bachelor's degree is required in parallel positions within the industry. However, the petitioner has failed to establish that the employers are companies similar to the petitioner. It is further noted that the duties set forth in the petitioner's newspaper ad for the proffered position differ materially from the position duties set forth in the vacancy announcement submitted by the petitioner. Furthermore, the relevant educational requirement information contained in the *Handbook* and as reflected on the ACAT website, indicates that, depending on the needs of the employer, the educational requirement for an accountant position ranges from an associate degree or certificate requirement, to a requirement for a bachelor's degree in accounting or a related field. The petitioner has failed to provide evidence containing a detailed description of the job duties for the proffered position in relation to its business interests. The petitioner has thus failed to establish that a degree requirement is common within the petitioner's industry in parallel positions among similar organizations. The petitioner has additionally failed to establish the company's position needs, or that the proffered position duties are so complex or unique that they can only be performed by an individual with a degree in a related specialty.

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 petitioner stated that the proffered position is a new position. Accordingly, 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 position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record also fails to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, “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.” As previously discussed, the description of the proffered position duties is too generic to determine the specific tasks that the beneficiary would perform on a daily basis within the context of the petitioner’s business. This generic description makes it impossible to assess whether the proffered position’s duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). As noted above, the *Handbook* and the information on the ACAT website reflect that an accountant position may require less than a baccalaureate degree in a specific field to perform the duties. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the evidence in the record fails to establish any specialized and complex nature of those tasks. Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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).

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 its burden. The appeal will therefore be dismissed and the petition denied.

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