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U.S. Citizenship
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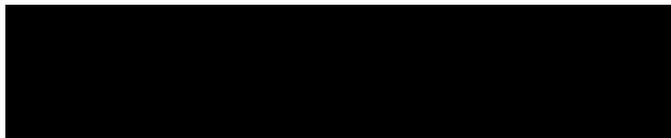
FILE: WAC 02 255 53547 Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2006

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a manufacturer and importer of general merchandise and gift items. It desires to employ the beneficiary temporarily in the United States for 20-30 hours per week as an accountant, at \$16.05 per hour, for three years. The director determined that the proffered position did not meet any of the criteria for classification as a specialty occupation.

On appeal, counsel states that the petitioner has proven that the minimum requirement for entry into the proffered position is a baccalaureate degree in accounting and that this degree requirement is common to the industry in parallel positions among similar organizations. The petitioner provided on appeal numerous advertisements for accountants in the wholesale industry. Additionally, counsel asserts that the petitioner showed how 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.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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) interpret 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-290B and supporting documentation; (2) the director's denial letter; (3) the director's two requests for additional evidence (4) the petitioner's two responses to the director's requests; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary's services as an accountant. In determining whether a position qualifies as a "specialty occupation" for purposes of nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

The Petition for a Nonimmigrant Worker (Form I-129) was accompanied by a letter signed by the president of the petitioning entity explaining the beneficiary's duties as an accountant. The letter states that the beneficiary's specific duties include preparing the company's payroll, withholding and payment of taxes, preparing financial reports and documents such as balance sheets, profit and loss statements (on quarterly and yearly basis), funds and cash flow statements and budgets, managing and coordinating the company's bookkeeping and billing activities, interpreting the accounts and records to management, as well as advising top management in financial planning and budgeting. The beneficiary will also monitor the company's financial matters during the course of a fiscal year to ensure compliance with tax laws and regulations and advise management on alternative means of tax strategies and possible additional deductions.

On December 23, 2003, CIS requested the petitioner to provide a more detailed description of the beneficiary's specific job duties. In its response dated March 4, 2004, counsel for the petitioner stated that the position of accountant requires that the beneficiary be in charge of managing and analyzing the petitioning entity's financial information and devising, implementing and maintaining a system for general accounting that is best suited for the company. Counsel states that 70 percent of the beneficiary's time will be devoted to preparing financial reports such as balance sheets, profit and loss statements (on quarterly and yearly basis), funds and cash flow statements and budgets and monitoring financial matters during the course of the fiscal year to ensure compliance

with tax laws and regulations. Counsel states that 15 percent of the beneficiary's time will be spent on overseeing the accounts payables department and monitoring the scheduling and releasing of payments. Counsel also states that the other 15 percent of the beneficiary's time will be spent interpreting accounts and records and preparing reports and presentations for management use.

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).

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; 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 Department of Labor's *Occupational Outlook Handbook* (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)).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (Handbook) for its information about the duties and educational requirements of particular occupations. Counsel states, in his letter of March 4, 2004, that as in-house accountant for the petitioning entity, the beneficiary's position will encompass the responsibilities listed in the *Handbook* as management accountant and internal auditor. However, the duties that the beneficiary will perform, as stated in the petitioner's letter that accompanied the petition, are not those of a management accountant or internal auditor.

According to the *Handbook*, 2004-05 edition, there are four major fields of accounting: public, management, government, and internal auditors. The *Handbook*, 2004-05 edition, reveals that the specific job duties vary widely among the four major fields and confirms that the proffered position is not that of an accountant. The *Handbook*, 2004-05 edition, sets forth at pages 68 and 69, the following descriptions of the duties of the four major fields of accounting:

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.

Government accountants and auditors work in the public sector, maintaining and examining the records of government agencies and auditing private businesses and individuals whose activities are subject to government regulations or taxation. Accountants employed by Federal, State, and local governments guarantee that revenues are received and expenditures are made in accordance with laws and regulations. Those who are employed by the Federal Government may work as

Internal Revenue Service agents or in financial management, financial institution examination, or budget analysis and administration.

Public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their clients, who may be corporations, governments, nonprofit organizations, or individuals. For example, some public accountants concentrate on tax matters, such as advising companies of the tax advantages and disadvantages of certain business decisions and preparing individual income tax returns. Others offer advice in areas such as compensation or employee healthcare benefits, the design of accounting and data-processing systems, and the selection of controls to safeguard assets. Still others audit clients' financial statements and report to investors and authorities that the statements have been correctly prepared and reported. Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Internal auditors verify the accuracy of their organization's internal records and check mismanagement, waste, or fraud. Internal auditing is an increasingly important area of accounting and auditing. Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations—everything their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations. There are many of highly specialized auditors, such as electronic data-processing, environmental, engineering, legal, insurance premium, bank, and healthcare auditors. As computer systems make information timelier, internal auditors help managers to base decisions on actual data, rather than personal observation. Internal auditors also may recommend controls for their organization's computer system to ensure the reliability of the system and the integrity of the data.

The *Handbook* also states that, increasingly, accountants “not only provide clients with accounting and tax help, but also help them develop personal budgets, manage assets and investments, plan for retirement, and recognize and reduce exposure to risks.”

Upon review of the beneficiary's duties initially submitted and those duties listed in the response to the director's request for evidence, the AAO finds that the evidence of record does not convey any details about the financial information the beneficiary will be in charge of managing and analyzing for the petitioning entity, and the level of accounting knowledge required to address these matters. For instance, there is no documentary evidence or information about the specific nature of the petitioner's operations, the complexity involved in overseeing and auditing the accounts payables department, the types and volume of transactions, the kinds of presentations the beneficiary is required to make, the nature of the petitioner's financial reports and/or statements, the spectrum of costs to be managed and audited, the extent of the petitioner's financial dealings, the range 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, or the nature of the budget/expenses variance issues and trends. Therefore, there is no factual basis for the AAO to determine the proffered position is one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty.

The *Handbook's* subsection “Sources of Additional Information” (page 74) refers the reader to the Internet site for the American Council for Accountancy and Taxation (ACAT), the professional organization that

provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of “verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.”² “Up to two” of the required years of work experience “may be satisfied through college credit.”

The AAO finds that the closest field to the proffered position is that of a bookkeeping, accounting, and auditing clerk. The *Handbook*, 2004-05 edition, page 437, describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

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 have 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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. 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 . . . such as accounts payable . . . or accounts receivable . . . 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

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The **Accreditation Council for Accountancy and Taxation (ACAT)** is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

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

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases The widespread use of computers . . . has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing.

As discussed in the *Handbook*, 2004-05 edition, 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. According to the *Handbook*, 2004-05 edition, pages 433 and 434, employers require most financial clerks to have at least a high school diploma, and a two-year associate's degree in business or accounting³ is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions. The *Handbook* does indicate that many individuals with four-year degrees accept bookkeeping and accounting clerk positions in order to enter the field or a particular company with the goal of being promoted to professional or managerial positions. The *Handbook*, 2004-05 edition, page 71, also indicates that many graduates of junior colleges and business and correspondence schools can obtain junior accounting positions.

Many of the duties listed under each specialized field of an accountant and described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties do not rise to the level of an accountant. Accordingly, the petitioner has not established that the proffered position requires at least a baccalaureate degree or higher degree, or its equivalent in a specific field of study for entry into the occupation.

The Petition for a Nonimmigrant Worker (Form I-129) reflects that the petitioner employs 4 persons. Counsel states on appeal that the petitioner currently employs ten employees plus four corporate representatives. The organization chart submitted on appeal shows that the petitioning entity has 20 employees consisting of a chairperson, president, treasurer, secretary, public relations specialist, administrative analyst, shipping manager, administrative assistant, customer service clerk, sales team, warehouse manager, three warehouse clerks, management analyst, finance analyst, accounts receivable supervisor, A/R clerk, AP clerk, and the

³ According to the website of Skyline College (<http://www.skylinecollege.net>), a community college located in San Mateo, California, an associate's degree in business or accounting would involve learning the fundamentals of financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the generally accepted accounting procedures (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 accounting techniques that would serve the needs of management and facilitate decision-making.

proffered position.⁴ Form I-129 also reflects the petitioner's gross annual income as of the petition's filing date as \$4,000,000. However, the record does not contain any evidence, such as income tax returns to substantiate this information. The petitioner's Employer's Quarterly State Reports of Wages Paid To Each Employee for the quarters ending March, June and September of 2003 have between 6-10 employees listed. Further, the petitioner's list of employees reflects 22 individuals while its Quarterly Tax Summaries ending June and September of 2003 show 6 and 10 employees, respectively. 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)).

While the size of the petitioner is generally not a factor in determining whether a position is a specialty occupation, the petitioner's level of income, number of employees, complexity and volume of business transactions have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Absent evidence of these factors, the petitioner has not shown that the proffered duties are so complex and specialized, that the position requires a person with at least a baccalaureate level of education to perform the tasks. The petitioner describes the proposed duties in exclusively general terms and does not demonstrate that the beneficiary would apply at least a baccalaureate level of highly specialized accounting knowledge in order to perform these duties. The duties of the proposed position do not rise to the level of those of an accountant. Many of the beneficiary's duties are performed by bookkeeping, accounting, financial and auditing clerks and these occupations, found on pages 433 and 437 of the *Handbook*, do not require a bachelor's degree in a specific specialty as a minimum entry into the occupation. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has submitted five job advertisements for accountants in the wholesale/distribution industry to show that a bachelor's degree in accounting is required. The job postings are from a supplier of fresh floral products, a wholesale distribution company, a construction company, a manufacturing firm, and a company called HouseHold International. HouseHold International does not state its type of business in the advertisement. Counsel states that the advertisements appear to be similarly situated, moderately sized growing companies, similar to the petitioner. Counsel's statement is not persuasive. The petitioner has not established that the advertisements are similar to the proffered position, a general merchandise wholesaler with \$4 million in gross annual income. A meaningful comparison between the proffered position and the positions advertised cannot be made, as there is insufficient information about the size and organization, volume of business, or financial structure of the advertised positions and the proffered position. The advertisements do not establish a degree requirement is common to the industry in parallel positions among similar organizations. The record does not include any submissions from firms, individuals, or a professional association in the petitioner's industry attesting to recruitment and hiring practices. Consequently, the petitioner has not established that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, this information does not establish that the position is a specialty occupation under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be

⁴ The chart with the names of the employees listed shows 22 positions, six of which are unfilled. The organization chart without the names of the employees reflects 20 positions.

performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has limited its information about the proffered position to generalized statements that lack any specific details to distinguish the position as unique from or more complex than a bookkeeper, auditing, financial or accounting clerk, a position for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The petitioner does not assert that it normally requires an individual with a degree in a specific specialty for entry into the proffered position, and offers no evidence concerning the petitioner's past hiring history with regards to this position. Consequently, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the duties of the proffered position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner states in a letter dated March 3, 2004 that due to the complex nature of the position, it requires that the accountant possess a bachelor's degree. However, no evidence to support this assertion has been presented. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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