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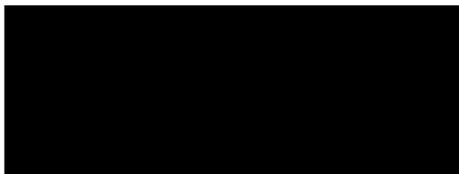
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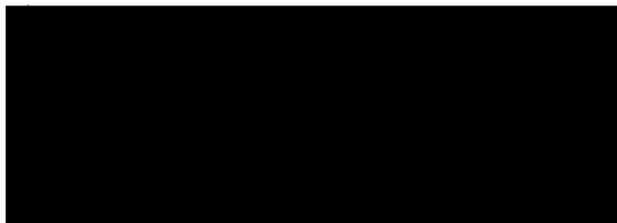


FILE: WAC 06 028 51257 Office: CALIFORNIA SERVICE CENTER Date: **OCT 02 2007**

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an electrical contractor<sup>1</sup> that seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching 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:

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<sup>1</sup> A search of the California Business Portal website at <http://kepler.sos.ca.gov/corpdata> finds no record of the petitioner's business. Thus the petitioner's status as a U.S. employer has not been established.

- (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) consistently 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 a part-time accountant. Evidence of the beneficiary's duties includes: the petitioner's June 1, 2005 letter in support of the petition and the petitioner's April 28, 2006 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

1. Preparing, examining and analyzing accounting records, financial statements and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards (40% of time);
2. Computing tax owed and preparing tax returns (20% of time);
3. Analyzing business operations costs, revenues, and financial obligations to project future revenues and expenses (20% of time);
4. Developing, maintaining and analyzing budgets and comparing actual costs with budget and budget forecasting (10-20% of time); and

5. Advising the petitioner on tax strategies (5-10% of time).

The director found that the proposed duties are similar to the duties of a bookkeeper, an occupation that does not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an accountant, an occupation that normally requires a bachelor's degree in accounting. Counsel also states that the proposed duties are so specialized and complex as to require a bachelor's or higher degree. Counsel cites a court decision to state that whether a position is professional is unrelated to the company's size, salary, or prior company history of maintaining the position.

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). Therefore, the proffered position is not 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; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-07 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." Counsel and the petitioner have stated that the proffered position is that of an accountant and have offered a general description of the position that lists duties typically performed by accountants. As discussed by the DOL, management accountants, the category of accounting most closely aligned to the duties described by the petitioner, are individuals who:

[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.

The AAO acknowledges that part of the above discussion is generally reflected in the petitioner's description of the proffered position. A petitioner, however, cannot establish employment as a specialty occupation by describing the duties of the employment in the same general terms as discussed in sources outlining occupations. The petitioner does not detail specific tasks that would be performed by the beneficiary in connection with the petitioner's electrical contractor business. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as they relate specifically to the petitioner's business. It is noted that information on the petition reflects the nontechnical job description as "bookkeeping for construction jobs." In addition, although information on the petition that was signed by the petitioner's general manager on October 14, 2005, reflects that the petitioner was established in 1991, has three employees and a gross annual income of \$500,000, the record contains no evidence in support of these claims such as federal income tax returns. It is also noted that the petitioner's quarterly wage and withholding report for the first quarter of 2006 reflects only two employees. 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)).

A review of the *Handbook* finds that not all accounting employment is performed by persons with at least a bachelor's degree, or its equivalent, in accounting or a related field. 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.

The "Significant Points" section of the *Handbook's* chapter states that "[M]ost jobs require at least a bachelor's degree in accounting or a related field." However, this language is not synonymous with the regulatory requirement of the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) that the particular position in question be one that normally requires at least a bachelor's degree in the specific specialty.

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.<sup>2</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>3</sup> the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, like that in the instant matter, 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.

As discussed above, information on the petition reflects that the petitioner was established in 1991, has three employees and a gross annual income of \$500,000. Information on the petition also reflects the nontechnical job description as “bookkeeping for construction jobs.” The record contains no documentation that supports counsel's claim on appeal that the proposed duties are professional duties requiring a minimum of a bachelor's degree in accounting. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). The petitioner has not provided documentary evidence to demonstrate that it is a business with complex financial requirements.

The record does not contain evidence, such as federal income tax returns, audits, loan agreements or business plans that document the petitioner's business operations as complex. The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business, despite its relatively limited income and small size, has the complexity of financial operations to require that the proffered position requires a degree in accounting. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

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<sup>2</sup> Information provided by the ACAT website [REDACTED] 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>3</sup> According to the website for Skyline College, a community college located in San Mateo, CA [REDACTED] 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.

22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear at most to be more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The record does not include any evidence regarding parallel positions in the petitioner's industry. Nor does the record include evidence from firms, individuals, or professional associations that establishes an industry standard. In this regard, the AAO here incorporates the discussion found below in the comments about 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) about the opinion letter from the person with a master's degree in accounting. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. As observed above, the petitioner has not provided evidence that the proffered position incorporates complex accounting duties requiring a minimum of a bachelor's degree in accounting. The petitioner has not identified any unique duties that are specifically pertinent to the petitioner's business operations that would require knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

On appeal, counsel submits an opinion letter, dated July 17, 2006, from an individual with a master's degree in accounting and an accounting instructor credential for the California community colleges, who opines that the proposed duties "require the candidate be trained in the discipline of accountancy, with a minimum of [a] four-year degree from an accredited institution in the United States." The author, however, does not indicate that he interviewed the beneficiary or the petitioner. Nor does he relate any personal observations of the petitioner's operations or of the work that the beneficiary would perform. Moreover, the author does not explain why his opinion, which appears contrary to the *Handbook's* report on this occupation, should be given greater weight than that of the *Handbook*. The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. The opinion of the July 17, 2006 author is insufficient to overcome the *Handbook's* finding that a bachelor's degree or its equivalent in a

specific discipline is not a requirement to perform the duties of this occupation. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel states, on appeal, that the proposed duties are so specialized and complex as to require a bachelor's or higher degree. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants who have less than a bachelor's degree in accounting or a related field. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant. To the extent that they are generically depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

Beyond the decision of the director, the petitioner has not established the beneficiary is qualified under the beneficiary qualification regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D) to perform the duties of a specialty occupation that requires at least a bachelor's degree in accounting or a related specialty. The record indicates that the beneficiary holds a U.S. degree in business administration and additional training related to a microcomputer operations specialist. A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). In this matter, neither the beneficiary's transcripts nor the additional training as a microcomputer operations specialist provide sufficient information to conclude that the beneficiary has a bachelor's degree in a specific discipline that directly relates to the proffered position. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record does not contain substantive evidence that the beneficiary has received a degree in a specific discipline directly related to the duties of a specialty occupation. For this additional reason, the petition will be denied. Accordingly, the AAO shall not disturb the director's denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

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