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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 057 51072 Office: CALIFORNIA SERVICE CENTER Date: APR 04 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

The petitioner is a medical and therapy clinic. It seeks to employ the beneficiary as an accountant and 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 denied the petition on the ground that the record did not establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the 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-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a medical/therapy clinic, established in 2001, with ten employees and around \$500,000 in gross annual income. The petitioner stated that the accountant it proposed to hire would be responsible for the “preparation of business accounting procedures such as journalization of daily accounting activities, disbursements (accounts payable), deposits of daily receipts (sales), payroll, financial statements, etc.” The beneficiary had the requisite education and experience for the position, the petitioner asserted, with a bachelor of commerce degree, majoring in accounting, from Araullo University in Cabanatuan City, the Philippines, in March 1986, and sixteen years of employment in the field of accounting. In response to the RFE the petitioner indicated that the accountant would spend 25% of her time on each of the following tasks – billing/invoices, disbursements, cost accounting expenditures, payroll, financial statements, journalization/bookkeeping – without explaining how 25% of the beneficiary’s time could be spent on each of six different tasks. According to the petitioner the company’s financial and accounting operations had been handled by an outside accounting firm, which was more costly than hiring an in-house accountant. The petitioner also submitted a job announcement for the proffered position, an organizational chart showing a total of eight employees, federal and state income tax returns for 2001 and 2002, and a quarterly wage and withholding report listing just three employees as of mid-2003.

Based on the petitioner’s description of the position, the director found that a significant amount of the beneficiary’s time would be spent performing duties of a bookkeeping or accounting clerk, an occupation, as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, that does not require an accounting degree. The evidence did not demonstrate that the proffered position had the complexity or scope of responsibility normally associated with an accountant, the director declared, nor show that the job could not be performed by an individual with less than a baccalaureate degree. The director also noted that the proffered position was the only one identified by the petitioner as performing financial record-keeping for the company, from which it appeared that a majority of the beneficiary’s time would be spent on bookkeeping/accounting clerk duties. The director determined that the record failed to establish that accounting duties were normal and customary requirements of similar organizations in the petitioner’s industry, or that the proffered position was so complex or unique that it could only be performed by an individual with a specialty degree. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal the petitioner asserts that the director erred in categorizing the proffered position as that of a bookkeeping or accounting clerk, instead of an accountant. The duties of the position include cost accounting, budgeting, and preparation of financial statements, the petitioner declared, as well as other tasks such as payroll preparation and computation of deductions, tax computations and filings,

recording of all transactions and monthly reconciliations of the company's books. The petitioner claims that the job is too complicated to be performed by a bookkeeper or accounting clerk and requires the services of an accountant.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

*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.

Most accounting positions, as indicated in the *Handbook*, require a bachelor's degree in accounting or a related field. *See id.* at 70. Accountants, therefore, qualify as a specialty occupation under the Act. By comparison, the *Handbook* 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.

*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.

*Handbook, id.*, at 437. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.*

Based on the evidence of record, the AAO determines that the petitioner has failed to establish that the beneficiary would perform the services of a full-time in-house accountant in the proffered position. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative, not the title of the position. The duties of the proffered position accord with the duties of a bookkeeping or accounting clerk, as described in the *Handbook*. The duties do not include typical accounting functions such as budgeting, performance evaluation, or cost and asset management; being part of an executive team involved in strategic planning; and preparing financial reports for nonmanagement groups.

Although the petitioner asserts that an expensive accounting firm performed the clinic's accounting functions during the years 2001-2003, no accounting expenses are specifically documented in the record and the petitioner's federal and state income tax returns during that time listed only \$2,000 of accounting expenses during 2001 and did not list any accounting expenses during 2002. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). The AAO also notes the conflicting information in the record about the number of employees at the clinic. The petition indicated that the clinic had ten employees, but the organizational chart subsequently submitted listed just eight, including the medical director, and a state wage and withholding report (form DE 6) listed just three. In the appeal brief the clinic's medical director declared that the discrepancy between the seven employees listed below him in the organizational chart and the three listed on the form DE 6 was that "others are working therein as independent contractors." Such a distinction between employees and independent contractors was not noted in the organizational chart, however, and the petitioner's response to the RFE specifically referred to all of the positions listed therein as employees of the clinic. It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Id.*

The proffered position is the only financial or record-keeping position identified on the petitioner's organizational chart, and the AAO agrees with the director that the duties of the position as described in the petitioner's various submissions are not so complicated or specialized that they could not be performed by an experienced bookkeeping or accounting clerk. As discussed above, the *Handbook* indicates that a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position. The proffered position, therefore, does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has not submitted any evidence that a bachelor's degree in accounting or a related specialty is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Though the petitioner has submitted a document which it claims to be the job opening announcement for the proffered position that was posted in the clinic and on the internet, the document is undated, does not identify the employing company, and instructs interested individuals to apply to the general manager, a position that does not exist on the petitioner's organizational chart. Accordingly, the job announcement has no evidentiary weight. The AAO concludes that the record does not establish that the petitioner normally requires a bachelor's degree in accounting or its equivalent for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in accounting or a related field. As far as the record shows, the duties of the position at issue in this case do not exceed those normally encountered in the occupational field of bookkeeping and accounting clerks, which do not require specialized knowledge at a baccalaureate level.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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