

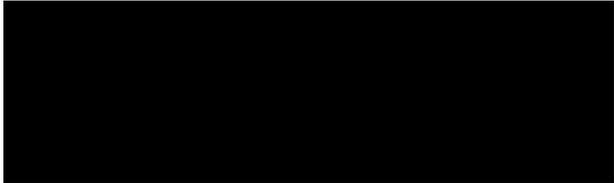


U.S. Citizenship
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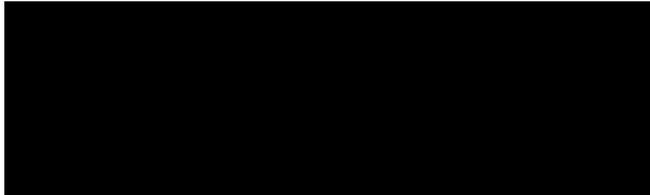


FILE: WAC 03 217 51111 Office: CALIFORNIA SERVICE CENTER Date: AUG 18 2005

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

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 retail distributor of cellular phones and beeper devices. 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 proffered position does not qualify 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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner's president described his company as a retail distributor of cellular phones and beeper devices, in business since 1993, with five employees and gross annual income of \$500,000. The petitioner proposed to hire the beneficiary as a part-time accountant (working 25-30 hours/week), indicated that it required at least a bachelor's degree in accounting for the position, and asserted that the beneficiary was qualified by virtue of her bachelor of science in commerce, with a major in accounting, from Far Eastern University in the Philippines, granted in April 1984. The duties of the proffered position were listed in the petitioner's response to the RFE as follows:

- Prepares monthly and yearly financial reports.
- Prepares billing statements, payments, general ledger, and company's tax remittances.
- Advises on and recommends to management regarding tax strategies.
- Advises management on tax advantages and disadvantages of certain business decisions or transactions with clientele.
- Compiles and analyzes financial information to prepare entries to company's accounts.
- Details company's assets, liabilities and capital.
- Prepares balance sheets, profit and loss statements, and other financial reports to summarize company's current and projected financial position.
- Reports directly to company's president.
- Administers employment wage system.
- Prepares company financial reports.
- Modifies and coordinates the implementation of accounting and accounting control procedures of apparel business.
- Meets with external auditors.
- Daily physical inventory of products after recording daily stores' transactions, transfers and purchases using QuickBooks accounting computerized system.
- Prepares reports of existing inventory to help management in determining reorder point of stocks.
- Prepares reports on missing inventories.
- Prepares reconciliation of receivables and shipping of items.
- Issues and controls checks and payables.
- Applies computer knowledge in computerized accounting systems such as Quickbooks, MS Word, and Excel.

The petitioner also submitted with its response to the RFE its job posting for the proffered position, its organizational chart, employee wage statements, and federal tax returns for the years 2000-2002.

The director found that the duties of the proffered position, as described by the petitioner, reflected the duties of an accounting clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, rather than the duties of an accountant. The director cited information in the *Handbook* indicating that a baccalaureate degree is not a normal, industry-wide minimum requirement to enter into an accounting clerk position. Furthermore, the evidence of record did not demonstrate that the position's level of responsibility indicated complexity or authority beyond that normally encountered in the occupational field. The director concluded that the proffered 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 DOL *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 Inc. v. Reno, id.*, at 1165-66.

On appeal counsel asserts that the petitioner has a "bona fide" need for an accountant, as evidenced in its "internal job posting" detailing the minimum requirements for the position. The volume of daily transactions justifies the petitioner's need for an accountant, counsel contends, and an in-house employee would be more advantageous to the company than out-sourcing to an independent contractor. Moreover, the petitioner's expanding business, as evidenced by documentation of an additional store outlet, further justifies the need for an accountant. The duties of the proffered position, counsel maintains, accord with the description of accountants in the *Handbook*. While acknowledging that some of the duties are bookkeeping or accounting clerk tasks, counsel contends that the bulk of the duties involve complex accounting functions that require the expertise 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.*

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 petitioner must show that the performance demands of the position compel its degree requirement. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree in accounting or a related specialty. 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 or a related specialty field. The proffered position lacks crucial attributes of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare

financial reports for nonmanagement groups like stockholders, creditors, regulatory agencies, and tax authorities. These functions are not reflected in the petitioner's description of the proffered position's duties. Thus, the scope of the proffered position lacks both the breadth and the depth of a management accounting position.

As previously noted, the petitioner states that it has five employees and gross annual income of \$500,000 (though its 2002 federal income tax return lists gross receipts of \$893,350). While the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with an annual income in the range of \$500,000 to \$1 million differ greatly from the responsibilities associated with an annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients.

The AAO notes that the petitioner's 2002 federal tax return lists expenses of \$10,000 for legal and accounting expenses combined, without specifying how much was spent on each. In Form I-129 the petitioner indicated that it intended to pay its accountant \$17.62/hour for a 25-30 hour week. This wage extrapolates to approximately \$500/week and \$25,000/year. Thus, the projected outlay for the proffered position far exceeds the petitioner's actual expenditures for accounting services, which casts further doubt on the petitioner's claim that the beneficiary would be primarily be performing the tasks of an accountant. 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 AAO agrees with the director that the duties of the proffered 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, accounting, or auditing clerk. Many of the duties – including the preparation of reports for management, financial reports, compilation of financial information for entry into accounts, documentation of business transactions, the preparation of balance sheets and profit and loss statements, as well as the monitoring of inventory – accord with the *Handbook's* description of bookkeeping clerks in small establishments, who “handle all financial transactions and recordkeeping” and whose specific duties include such functions as recording all transactions, producing financial statements, preparing reports for supervisors and management, preparing bank deposits by compiling data from cashiers and verifying and balancing receipts, making purchases, and keeping track of overdue accounts. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping and accounting clerk positions, though employers often require a two-year associate's degree in business or accounting.¹ Since bookkeeping and accounting clerks do not require a baccalaureate degree in

¹ According to the website for Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net), 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 (generally accepted accounting principles), forecasting, budgeting, cost accounting, and break even analysis, as well as 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,

accounting or a related specialty, the proffered position 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 a specific 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 a specific 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. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The AAO also notes that the petitioner, on its job posting, listed "bachelor's degree" as the minimum educational requirement for the proffered position, without indicating any particular specialty.

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, 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 a specific specialty. As previously discussed, the AAO is not persuaded by the evidence of record that the duties of the position exceed the occupational scope of an experienced bookkeeping or accounting clerk, positions which does 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.

differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping and accounting clerks. Considering the nature of the petitioner's business and the scale of its operations, the AAO concludes that a bookkeeping or accounting clerk could perform the services of the proffered position.