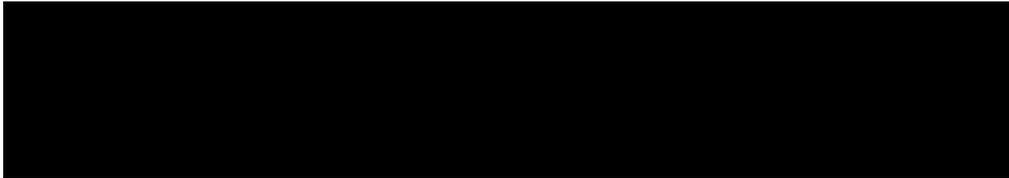


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DI

FILE: WAC 04 018 53259 Office: CALIFORNIA SERVICE CENTER Date: AUG 25 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 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 director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a civil engineering, construction and general engineering contractor, with 8-12 full-time employees. It seeks to employ the beneficiary as an accountant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition because he found the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director; and (4) the director's denial of the petition; and (5) 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 petitioner's 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:

- (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 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 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s October 22, 2003 letter of support submitted with the Form I-129; and counsel’s March 31, 2004 response to the director’s request for evidence. Stating in its letter of support that the beneficiary would provide “all required professional accounting services to our clients,” the petitioner identified the following specific duties to be performed by the beneficiary:

- Budget planning, cost accounting, analysis and preparation of required management and government reports;
- Application of principles of accounting to analyze financial information and prepare financial reports;
- Compilation and analysis of financial information to prepare entries to accounts, such as general ledger accounts;
- Documentation of business transactions;
- Analysis of financial information detailing assets, liabilities, and capital, and prepares balance sheets, profit and loss statements, and other reports to summarize current and projected company financial positions;
- Audit of contracts, orders, and vouchers;
- Preparation of reports to substantiate individual transactions prior to settlement; and
- Establishment, modification, documentation and coordination of implementation of accounting and accounting control procedures.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by CIS when determining these criteria include: whether the Department of Labor’s (DOL)

Occupational Outlook Handbook (Handbook), on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn.1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y.1989)).

The 2004-2005 edition of the *Handbook* identifies four major fields of accounting: public, management, government and internal. Of these, management or private accountants appear to be the field most closely related to that of the proffered position. As described at pages 68-69, management 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.

In his denial, the director indicated that he had reviewed the above description but had concluded that the proffered position was more closely aligned to the occupation of bookkeeping, accounting and auditing clerks. He found the petitioner's discussion of the beneficiary's responsibilities to be reflected in the following discussion of the work performed by bookkeepers and accounting clerks, at page 437 of the *Handbook*:

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

In small establishments, bookkeeping clerks handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

. . .

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 They may review invoices and statements to ensure that all the

information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

On appeal, counsel asserts that the duties of the proffered position are those of an accountant and fully consistent with the *Handbook's* description of that occupation. She contends that the director mistakenly concluded that that accountants are not financial recordkeepers, and also erred when he found that the petitioner did not have the type of business, nor the scope or complexity of operations, that required an accountant.

The AAO takes note of counsel's concerns regarding the statements made by the director in his denial of the instant petition. It agrees that the director too narrowly defined the work of accountants who, as stated by the *Handbook*, do record financial information for the organizations employing them. Further, it does not find the record to establish that the petitioner's business is not of the type or the scale and complexity to require an accountant. There is nothing in the *Handbook* to indicate that accountants are not employed in the construction industry. Further, there is nothing in the record to indicate that the duties to be performed by the beneficiary are related to the size of the petitioner's organization, i.e., to involve any tasks regarding payroll or employee benefits, etc. Instead, they appear to be tied largely to tracking, recording and reviewing the petitioner's financial transactions, as well as implementing its financial control procedures.

However, while the AAO may disagree with certain of the director's observations, it concurs with his overall finding that the proffered position is more closely related to the employment of bookkeepers than to that of accountants. In reaching its decision it has relied on the expanded description of the proffered position provided by counsel in response to the director's request for evidence. That description indicated that the beneficiary's record-keeping and analytical tasks would be completed on a daily basis, with expenses, disbursements, accounts receivable and general ledgers recorded on a weekly basis. Counsel stated that the beneficiary would devote 30 percent of his time to analysis and the preparation of financial reports, 20 percent to updating ledger accounts, 20 percent to preparing bids and analysis, and 30 percent to contract administration, budget planning and cost accounting. Counsel also supplied the following description of the financial analysis to be performed by the beneficiary:

[The beneficiary] will analyze financial information and prepare financial reports. He will compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. He will analyze financial information detailing assets, liabilities, and capital, and prepare balance sheets, profit and loss statements, and other reports to summarize current and projected company financial position[s]. In this context, a significant function is to audit contracts, orders, and vouchers, and prepare reports to substantiate individual transactions prior to settlement with suppliers and to review bids. Additionally, he shall [e]nsure that credit terms are maintained and collected.

He will further review data to determine material and labor requirements and prepare itemized lists. Computation of cost factors and preparation of estimates used for management purposes, such as planning, organizing, and scheduling work, preparing bids, selecting vendors or subcontractors, and determining cost effectiveness.

Counsel's expanded discussion of the proffered position's duties does not support the petitioner's contention that the proffered position is that of an accountant. While the duties of the proffered position indicate that the beneficiary would require some knowledge of accounting principles, they do not establish that the accounting knowledge required to perform the duties of the position would be on a par with what an accountant possesses by virtue of at least a baccalaureate degree or the equivalent in accounting. Although management accountants are required to record and analyze the financial information of the companies for which they work, their responsibilities extend beyond these requirements, being much broader and more complex than those outlined in the petitioner's job description. As noted by the *Handbook*, accountants routinely have responsibility for performance evaluation, cost management, and asset management, and they not only analyze but interpret financial information for the organizations employing them.

Accordingly, the AAO concludes that the duties of the proffered position, including those specifically discussed by counsel in her response to the director, are those of a full-charge bookkeeper or perhaps an intermediate position of junior accountant, neither of which, as discussed below, requires those seeking employment to have a baccalaureate or higher degree.

The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping and accounting clerks:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

Educational requirements for junior accountants are discussed at page 71:

Many graduates of junior colleges and business and 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.

As the *Handbook* indicates no requirement that those seeking work as a bookkeeper or junior accountant hold a baccalaureate degree or its equivalent, the AAO concludes that the proffered position cannot be established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

On appeal, counsel also references the descriptions of the accountant fields provided by the *Dictionary of Occupational Titles (DOT)*. She further notes that the *Occupational Information Network (O*Net)*, which has replaced the *DOT*, assigns a JobZone 4 occupation rating to the employment of accountants. However, the proffered position is not that of an accountant and, therefore, such information provided by counsel is not relevant to this proceeding. Moreover, the AAO does not find the *DOT* or the *O*Net* to be persuasive sources of information regarding the classification of occupations, including whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. They provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the level of education, training, and experience required to perform the duties of that occupation. The ratings provided by the *DOT* and *O*Net* indicate only the total number of years of vocational preparation required for a particular occupation. They do not describe how those years are to be divided among training, formal education, and experience, or specify the particular type of degree, if any, that a position would require. As a result, such ratings cannot satisfy CIS requirements that the degree discussed at 8 C.F.R. § 214.2(h)(4)(iii)(A) be in a specific specialty that is directly related to the proffered position.

To establish the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – counsel, in response to the director's request for evidence, submitted seven Internet job announcements for accountants. However, these announcements, as noted by the director, do not satisfy the requirements of the first prong of the second criterion.

Of the seven on-line advertisements submitted by counsel, three were published by organizations that do not appear similar to the petitioner – a college, a firm developing educational curricula, and an energy company – and three did not describe their businesses. As a result, they fail to satisfy the first prong's requirement that the petitioner establish its degree requirement among similar organizations. Only one announcement indicated that it came from a firm in the construction industry, although the firm's business appears limited to home construction whereas the petitioner's business encompasses commercial as well as residential construction projects. This announcement indicates the business' interest in hiring a junior accountant and describes duties that appear parallel to those described by the petitioner. However, as previously indicated by the *Handbook* in its description of the requirements for junior accountant positions, the employer does not require job applicants to hold a degree. Instead, it indicates only a preference for degreed candidates. Moreover, the advertisement does not indicate that it prefers candidates to hold a degree in a field directly related to the position advertised. Accordingly, this advertisement also fails to satisfy the requirements of the criterion's first prong. The AAO notes, however, that even had this advertisement indicated the employer required a degree in accounting or a related field, a single Internet advertisement would be insufficient proof of an industry-wide norm.

The AAO also concludes that the record before it does not establish that petitioner's position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the employment histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Counsel's response to the director's request for evidence, however, states that the proffered position is newly created. As a result, the petitioner has no evidence to submit in response to the requirements and cannot establish its proffered position as a specialty occupation based on its normal hiring practices under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position 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. In assessing whether the petitioner has met its burden with regard to this criterion, the AAO has again reviewed the duties of the proffered position, as expanded upon by counsel in response to the director's request for evidence, to determine whether they reflect a higher degree of knowledge and skill than would normally be required of a full-charge bookkeeper or junior accountant, or, perhaps, represent an amalgam of jobs that require different skills and qualifications. It finds, however, no evidence in the record to indicate that the duties of the proffered position are either more specialized or more complex than those routinely performed by bookkeepers and junior accountants in the course of their employment. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

For reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.