



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-, INC.

DATE: SEPT. 29, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a jewelry business, seeks to extend the Beneficiary's temporary employment as an "accountant" under the H-1B nonimmigrant classification for specialty occupations. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The H-1B program allows a U.S. employer to temporarily employ a qualified foreign worker in a position that requires both (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum prerequisite for entry into the position.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner had not demonstrated that the proffered position qualifies as a specialty occupation. The Director reaffirmed this basis for denial in subsequent motions. The Petitioner filed an appeal, which we initially summarily dismissed. Afterwards, we reopened the proceedings and dismissed the appeal on its merits.

The matter is before us on combined motions to reopen and reconsider. In its combined motions, the Petitioner submits additional evidence and asserts that our decision was erroneous. We will deny the motions.

I. MOTION REQUIREMENTS

A motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Upon review, we find that the Petitioner's documents and assertions on motion do not demonstrate eligibility for the benefit sought.

On motion, the Petitioner presents new job announcements placed by other companies for “senior accountant” positions. The Petitioner submits these job announcements in an effort to show that some of the proffered duties are “typical” duties for accountants rather than bookkeepers. But those advertising employers are not petitioning for H-1B visas under the “Accountants” occupational category. Those employers’ self-imposed standards are not reflective of this position’s qualification as a specialty occupation under the pertinent statute and regulations.

To determine whether a particular job qualifies as a specialty occupation, we do not simply rely on a position’s title. The specific duties of a position, combined with the nature of the employer’s business operations, are factors to be considered. The submitted job announcements do not provide sufficient details about either the positions’ duties or the employers’ business operations. For example, the advertisement from [REDACTED] lists one possible job duty as to “lead tasks or aspects of a task or project; provide guidance to less experienced staff members.” However, the advertisement does not further explain the type of tasks or projects, or the number and nature of junior staff members (e.g., whether and how many are accounting or bookkeeping staff) involved. Similarly, the job announcement from [REDACTED] states that its senior accountant position “will supervise and direct the company’s financial activities,” but does not further explain the size, scope, or other aspects of its financial operations.

As we stated in our prior decision, one of the critical issues here is the lack of evidence that the Beneficiary will actually be performing specialty occupation caliber accountant duties.¹ Again, we must consider the duties and responsibilities of the proffered position as they will actually be performed within the context of the Petitioner’s business operations. While our review is not limited to an employer’s size, it is reasonable to assume that the size of an employer’s business has or could have an impact on the claimed duties of a particular position. *See EG Enters., Inc. v. Dep’t of Homeland Sec.*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Therefore, the Petitioner’s size and nature of its operations as a seven-employee jewelry business impacts upon the actual duties of the Beneficiary.

In this matter, the Petitioner does not claim and has not demonstrated that it has any employees who perform routine bookkeeping services, in order to relieve the Beneficiary from performing such non-qualifying duties. On motion, the Petitioner seems to acknowledge that the Beneficiary will perform those bookkeeping duties. It states, for example, that the Beneficiary “is technically the ‘accounting department.’” The Petitioner also states that “[its] business does not lend itself to employ multiple accounting clerks. The Beneficiary handles almost all the accounting aspects of the company, and [its outside accounting firm, [REDACTED] handles the rest of the accounting work.” According to [REDACTED] letter which the Petitioner also highlights on motion, [REDACTED] primary services or “prime input” for the Petitioner is to revise and review the information gathered by the Beneficiary, and to transmit such data to external agencies like the Internal Revenue Service. In other words, [REDACTED] prepares and files the Petitioner’s tax returns

¹ As will be explained later, not all accounting duties are of specialty occupation caliber.

based on information gathered by the Beneficiary. This further supports our conclusion that the Beneficiary alone performs the Petitioner's bookkeeping functions.

The Petitioner counters that the Beneficiary's performance of non-qualifying bookkeeping duties is "typical in a smaller staffed business environment" and should not take away from her accounting duties. We do not agree. There is no provision in the law for specialty occupations that permits the performance of non-qualifying duties. In other words, the law does not permit the Beneficiary to perform non-qualifying bookkeeping duties, even if the rest of her duties were accounting duties of specialty occupation caliber. While we view the performance of duties that are incidental² to the primary duties of the proffered position as acceptable when they are unpredictable, intermittent, and of a minor nature, anything beyond such incidental duties (e.g., predictable, recurring, and substantive job responsibilities) must be specialty occupation duties or the proffered position as a whole cannot be approved as a specialty occupation. Considering the nature of the Petitioner's operations and job descriptions, we find that the Beneficiary's non-qualifying bookkeeping duties are not incidental duties.

We further disagree with the Petitioner's assertion that an accountant position is "certainly" and "quite clearly" a specialty occupation. To support this assertion, the Petitioner cites to the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, the Occupational Information Network (O*NET), and the regulatory definition of "specialty occupation" in 8 C.F.R. § 214.2(h)(4)(ii).

Although the *Handbook* states that "most accountant and auditor positions require at least a bachelor's degree in accounting or a related field," it also states that, "[i]n some cases, those with associate's degrees, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job."³ The *Handbook* does not indicate that the education and experience requirements set by the employers must be the equivalent to at least a bachelor's degree in a specific specialty. Thus, we find that the *Handbook* does not support the Petitioner's claim that an accountant position is categorically a specialty occupation.

When reviewing the *Handbook*, we must also consider the Petitioner's designation of the proffered position at a Level I wage rate (the lowest of four assignable wage levels). The Level I wage designation indicates that the proffered position is a relatively low, entry-level position compared to other positions within the same occupation.⁴ The record lacks sufficient evidence to support a

² The two definitions of "incidental" in *Webster's New College Dictionary* are "1. Occurring or apt to occur as an unpredictable or minor concomitant . . . [and] 2. Of a minor, casual, or subordinate nature" *Incidental, Webster's New College Dictionary* (3rd ed. 2008).

³ Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook*, Accountants and Auditors (2016-17 ed.).

⁴ U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf.

finding that an entry-level accountant position such as this (according to the LCA) would normally have a minimum specialty degree requirement or its equivalent, when the *Handbook* does not indicate that the “Accountants” occupational category as a whole has such a requirement.

Nor does O*NET support the Petitioner’s claim that an accountant position is categorically a specialty occupation. Consistent with the *Handbook*, O*NET states that most accountant positions require a four-year bachelor’s degree, but importantly, “some do not” require a four-year degree. Further, O*NET does not indicate whether these four-year bachelor’s must be in a specific specialty directly related to the occupation.

Although the regulation at 8 C.F.R. § 214.2(h)(4)(ii) lists accounting as one of several non-exhaustive fields of human endeavor, it also states that a “specialty occupation” must meet other requirements, i.e., that it requires (1) the theoretical and practical application of a body of highly specialized knowledge, and (2) the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The Petitioner has not demonstrated that the proffered position meets these requirements. Especially considering our prior discussions on this position’s bookkeeping functions and entry-level wage classification (among other issues), we find that the Petitioner has not demonstrated that this particular position qualifies as a specialty occupation, as that term is defined in 8 C.F.R. § 214.2(h)(4)(ii).⁵

The Petitioner additionally claims that the Beneficiary’s prior H-1B approval shows that an accountant position is categorically a specialty occupation. But if the previous nonimmigrant petition was approved based on the same assertions that are contained in the current record, it would constitute material error on the part of the Director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous.⁶ See *Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988); see also *Sussex Eng’g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, the Petitioner asserts that its job descriptions did not materially change. The Petitioner claims that missing job duties are “still included, just in different language,” while new job duties merely detail previously-provided duties. The Petitioner also acknowledges the record’s “bizarre” but “correct” way of describing some of the Beneficiary’s claimed duties. We find that, instead of reconciling the job descriptions, the Petitioner’s explanations further highlight the vague and confusing nature of its various job descriptions.

Overall, the Petitioner has not demonstrated that the proffered position qualifies as a specialty occupation, and accordingly, that we erred in dismissing its appeal.

⁵ The regulation at 8 C.F.R. § 214.2(h)(4)(ii) largely restates the statutory definition of “specialty occupation” at section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

⁶ Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not met the requirements for a motion to reopen or a motion to reconsider

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of S-, Inc.*, ID# 741678 (AAO Sept. 29, 2017)