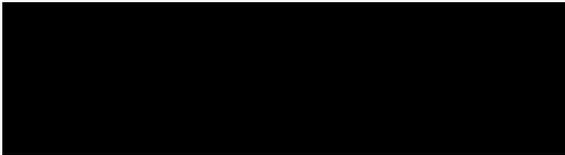




U.S. Citizenship  
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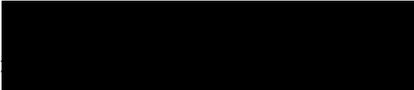
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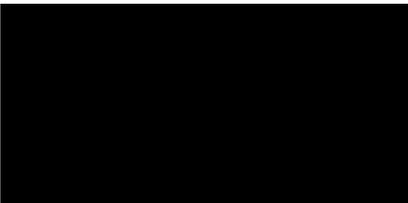
*D2*

FILE: WAC 03 152 50339 Office: CALIFORNIA SERVICE CENTER Date: **AUG 31 2005**

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, Director  
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 operates as a food distributor and seeks to employ the beneficiary as a full-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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and supporting documents.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

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

The petitioner is seeking the beneficiary's services as a full-time accountant. The petitioner indicated in its initial letter that it wished to hire the beneficiary because he possessed a bachelor's degree and work

experience. The petitioner stated in response to the director's request for evidence that it requires a baccalaureate degree or its equivalent in business administration with a focus on either accounting or information systems for the proffered position. The director found, and the AAO concurs, that the petitioner changed the duties of the position in response to the director's request for evidence.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states the beneficiary has earned a degree in business administration and has taken eleven courses in accounting.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in an accounting-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in the field of study required by a specialty occupation.

On appeal, counsel contends that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the specialty occupation.

The record reflects that the beneficiary obtained a degree of Bachelor of Business Administration from Pacific State University in California with a major in computers in business. Additionally, the beneficiary attended two other colleges in California, whose credits transferred to his record at Pacific State University.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that:

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. A beginning accounting and auditing position in the Federal Government, for example, usually requires 4 years of college (including 24 semester hours in accounting or auditing) or an equivalent combination of education and experience. Some employers prefer a master's degree in business administration with a concentration in accounting.

Counsel contends that the beneficiary has completed eleven accounting or accounting-related courses, and that this course selection would clearly be similar to that of an accounting major or at least of someone with a concentration in accounting. Counsel notes that the beneficiary has earned a bachelor's of business administration degree from the Pacific State University. The beneficiary's transcripts reveal that the beneficiary has taken the following courses: principles of financial accounting (5 hours), accounting for decision making III (2 hours), managerial finance I (2 hours), managerial finance II (4 hours), international finance I (4 hours), principles of managerial accounting (5 hours), mathematical models in business (4 hours), managerial statistics (4 hours), principles of micro-economics (3 hours), principles of macro-economics (3 hours) and elementary statistics (3 hours). Counsel asserts that the beneficiary's coursework meets the petitioner's requirement of a degree in accounting or a related field. However, the evidence of record does not establish that the beneficiary has a concentration in accounting. As noted in the *Handbook*, an entry-level position with the Federal Government usually requires 24 semester hours in accounting or auditing. The beneficiary has a total of 12 credit hours in accounting or auditing.

The record does not reflect that the petitioner has met the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and has not established that the beneficiary has the equivalent of a bachelor's degree in the specific specialty required by the specialty occupation. The beneficiary's university records indicated that the course of study was focused on computer information systems and computers in business. Additionally, the petitioner indicated that the beneficiary has been employed as a business information systems analyst. The petitioner highlighted the beneficiary's experience in business information systems and business analysis as well as various database and accounting-related software systems in order to relate the beneficiary's work experience to the materially changed job description of systems accountant in response to the director's request. Further, as noted above, the beneficiary has not proved a minor course of study in accounting.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of an accountant. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not established that the position is a specialty occupation. On appeal, the petitioner contends that the proffered position is 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.

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 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 petitioner is seeking the beneficiary's services as a full-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail assisting the president on all phases of accounting duties for a wholesale food distributor which would include:

- Applying knowledge of accounting, finance, business economics, and business management to conduct accounting transactions; using computer to analyze past and present financial operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses; documenting revenues and expenditures expected and maintain budgetary systems that provide control of expenditures made to carry out business activity and to specify factors affecting profitability in short-term and long-term (70% of time);
- Analyzing financial information detailing assets, liabilities and capital, and preparing balance sheets, profit and loss statement and other reports to summarize current and projected company financial positions; handling accounts payable and receivable, reconciling bank statement and other accounts; assisting to maintain in-house accounting system using various software and assisting in developing and installing a computer-based budget system. (30% of time).

The director issued a request for evidence, specifically: a more detailed description of the work done including specific job duties, percentage of time to be spent on each duty, and level of responsibility. Additionally, the director requested evidence to establish the beneficiary's qualifications. The director noted that the beneficiary did not have a degree in accounting and requested that the petitioner provide employment letters from previous employers establishing that the beneficiary has training and/or experience in the specialty occupation. The director requested a copy of the petitioner's organizational chart.

In response, counsel stated "[t]he original job offer was for the position of Accountant. However, since the filing of this H-1B petition, the petitioner would like to make some changes to this job offer and the current job title is Systems Accountant." Counsel submitted a revised job description. The director determined that the revised job description included material changes to the job duties, specifically introducing software development duties into the original duties. The director determined that the amended description could not be considered when determining whether the position offered to the beneficiary was a specialty occupation. The director reviewed the beneficiary's transcript and degree in bachelor's of business administration and noted that it had an emphasis in computer information systems. The director noted that the beneficiary's transcripts listed only three bona fide accounting courses. As discussed above, the director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief and also addresses the issue of whether the position qualifies as a specialty occupation.

On appeal, counsel contends that the additional duties did not constitute a material change to the petition, but were simply a clarification of the originally submitted duties.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The analysis of whether the proffered position qualifies as a specialty occupation will be based upon the job description originally submitted for the proffered position of accountant.

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 considers 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook's* description of a management accountant underscores the differences between the proffered position and a management accountant. While it is true that not all accountants are part of an executive team, the *Handbook's* delineation of a management accountant as part of an executive team involved in strategic planning or new-product development illustrates the scope and complexity of a management accountant's responsibilities. Likewise, the role of the accountant to prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities also illustrates the level of a management accountant's responsibilities. Because the beneficiary will not be part of an executive team and will not prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, this indicates that the beneficiary's duties do not rise to the same level as a management accountant.

The *Handbook* states:

Accountants and auditors held about 1.1 million jobs in 2002. They worked throughout private industry and government, but 1 out of 5 wage and salary accountants worked for

accounting, tax preparation, bookkeeping, and payroll services firms. Approximately 1 out of 10 accountants or auditors were self-employed.

Many accountants and auditors are unlicensed management accountants, internal auditors, or government accountants and auditors; however, a large number are licensed Certified Public Accountants. Most accountants and auditors work in urban areas, where public accounting firms and central or regional offices of businesses are concentrated.

The record shows that the petitioner operates as a food distributor. The Form I-129 indicated ten employees and a net annual income of \$100,000. The petitioner's level of income has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for income of \$100,000 differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. Additionally, the record does not contain evidence establishing the petitioner's income. The petitioner has not provided evidence that supports its contention that due to the size and complexity of its business the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation. 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)).

On appeal counsel asserts that the majority of the duties resemble those of an accountant and not a bookkeeper and refers to the passage in the *Handbook* cited above, management accountant. Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. This statement is not persuasive. The *Handbook* reveals that the director properly concluded that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the 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 account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

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.

The petitioner stated that the beneficiary will be analyzing financial information detailing assets, liabilities and capital, and preparing balance sheets, profit and loss statement and other reports to summarize current and projected company financial positions; handling accounts payable and receivable, reconciling bank statements and other accounts. Such duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports, verify records of transactions, reconcile billing vouchers, produce financial statements, prepare reports and summaries for supervisors and managers, and handle the payroll.

Counsel states that the majority of the beneficiary's duties consist of applying knowledge of accounting, finance, business economics, and business management to conduct accounting transactions; using computer to analyze past and present financial operations, trends and costs, estimated and realized. As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting.<sup>1</sup>

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The position is that described in the *Handbook* for bookkeeping, accounting, auditing and financial clerks.

The petitioner has not established that a specific degree requirement is common to the industry in parallel positions among similar organizations pursuant to the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2). The petitioner submitted a letter from a company that indicated it was also a specialty food distributor. The author of the letter indicated that it had 13 full-time employees and a systems accountant with a bachelor's degree in management information systems. The proffered position is not that of a systems accountant. The evidence of record is insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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, forecasting, budgeting, cost accounting, break even analysis, 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, differentiate, and interpret accounting concepts and data in a multitude of business situations. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques which serve the needs of management and facilitate decision making.

performed by bookkeepers and accounting clerks, positions which do not require a bachelor's degree in a specific specialty.

In response to the director's request for evidence, counsel noted that the petitioner had previously employed a systems accountant; however, the petitioner has not submitted any documentation, such as payroll records or education documents, to support this statement. Thus, the petitioner cannot establish that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties 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. Many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks, occupations that do not require a bachelor's degree. The petitioner therefore fails to establish 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. For this additional reason, the petition may not be approved.

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.