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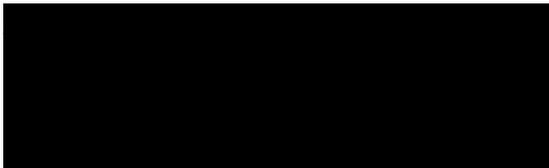
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FILE: WAC 03 111 54528 Office: CALIFORNIA SERVICE CENTER Date: *1111* 06 2005

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 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 provides labor crisis healthcare staffing to hospitals and other healthcare facilities. 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 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.

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 thereto; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner stated that its business was established in 1999, employed 32 individuals on its in-house staff and 175 healthcare professionals for assignment to hospitals and other healthcare facilities around the country, and had gross annual income of nearly \$4 million. The petitioner declared that the volume of its business necessitated the services of a full-time in-house accountant. The duties of the proffered position were described as follows:

Analyze financial information detailing the company's assets, liabilities and capital. Prepare balance sheets, profit and loss statements and other reports to summarize current and projected financial position. Audit orders, billings and vouchers and prepare reports to substantiate individual transactions. Compile and analyze financial data to prepare entries to ledger accounts and other financial documentary business transactions. Audit invoices and check billing records from various clients.

The petitioner asserted that the position required a bachelor's degree in business administration with a major in accounting, and that the beneficiary was qualified to perform the services of the job by virtue of the bachelor of science in commerce degree, with a major in accounting, she earned from Far Eastern University in the Philippines on October 20, 1986, and her subsequent work experience as an accountant.

In response to the request for additional evidence, the petitioner provided a more detailed description of the proffered position's duties, and the percentage of time required by each duty:

- Perform reconciliations, review and analyze accounts, and record journal entries. Reconcile balance sheet accounts and journal entries for bank transactions. Generate, review, and distribute profit and loss statements, balance sheets, cash flow and income statement analysis. Maintain ledger in adherence to accounting policies and GAAP – 30%.
- Perform month end close responsibilities, month end accruals, month end closing entries, allocations and chargebacks, and reconciliations. Prepare payroll, withholding taxes and remittances – 25%.
- Audit invoices and purchases – 10%.
- Monitor and project cash flow and recommend advances and repayments. Review billings from clients and reconcile accounts payable and receivable – 15%.
- Assist with various tax and government filings and requests for information from other agencies – 10%.
- Lead internal conferences in presentation of filing and financial information – 10%.

In his decision the director determined that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). While recognizing that the position involved some accounting procedures, the director found that the majority of the job duties were bookkeeping and administrative functions – in accordance with the description of bookkeeping and accounting clerks in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* –

an occupation which does not require a baccalaureate degree in a specific specialty. The director noted that the petitioner's organizational chart listed a financial manager position, and concluded that the more complex duties involving business finances would be performed by that individual. The evidence of record did not indicate that the duties and responsibility level of the proffered position were beyond the scope of a typical bookkeeping or accounting clerk, the director declared, or that the job could not be performed by an individual with a sub-baccalaureate level of education. Lastly, the director noted the lack of evidence in the record that the petitioner normally requires applicants for the position to have a baccalaureate degree in the field.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* 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 duties of the proffered position accord with the job description of an accountant in another DOL publication, the *Dictionary of Occupational Titles*, and cannot be performed by a bookkeeping or accounting clerk. Counsel submits a series of Internet job announcements for accountants listing duties similar to those of the proffered position. Since the DOL *Handbook* clearly states that accountants require a baccalaureate degree in accounting or a related field, counsel contends that the proffered position is a specialty occupation. Counsel asserts that the position qualifies as a specialty occupation under at least three of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A), without specifying which three.

The AAO agrees with the director that the evidence of record does not establish that the beneficiary would be performing the duties of an accountant in the proffered position.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on accounting duties as presented in the current, 2004-2005 *Handbook* sections on accountants and auditors (pages 68-72) and bookkeeping, accounting, and auditing clerks (pages 437-438).

The totality of information in the aforementioned sections of the *Handbook* establishes that there are many positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples found in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, and junior accounting clerks. This statement (*Handbook*, at 428) illustrates the fact that not all accounting functions require a person with a bachelor's degree in accounting or a related specialty:

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of

financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects.

The AAO finds that the evidence of record about the proffered position and its duties does not establish the position as one that normally would require least a bachelor's degree, or its equivalent, in accounting or a related specialty. Also, to the extent that it is described in the record, the proffered position does not comport with any occupation addressed in the *Handbook* that would be cognizable as a specialty occupation under the relevant CIS regulations.

In its letter responding to the RFE on September 29, 2003 the petitioner stated that its previous in-house accountant had been promoted to the position of finance manager. According to the organizational chart that individual's name is [REDACTED]. In the petitioner's California DE 6 quarterly wage reports (DE 6 forms) for the eight quarters comprising the calendar years 2001 and 2002, however, the name Lou Fanger does not appear among the listed employees. On appeal the petitioner's president submitted a letter attesting that "all our accountants" are required to have baccalaureate degrees in accounting and that "[o]ur last accountant was [REDACTED] who worked for us from May 20, 2002 to January 16, 2003 . . . through Travel Nurse, Inc." [REDACTED] is likewise not listed as an employee of the petitioner's on the DE 6 forms. Moreover, the statement that [REDACTED] was the petitioner's last accountant appears to conflict with the prior statement in response to the RFE that the petitioner's previous accountant had been promoted to finance manager, the name of whom on the organizational chart is [REDACTED]. Thus, there is no documentation in the record confirming that either of the accountants the petitioner claims were previous employees ever worked for the company. Furthermore, the petitioner's evidentiary omissions of the duties and educational requirements of the finance manager and chief financial officer (CFO) positions – positions directly superior to the accountant on the organizational chart - lends weight to the director's conclusion that the finance manager and CFO would perform more complex financial duties for the company and that the duties of the proffered position would primarily be those of a bookkeeping or accounting clerk.

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.*

Based on the evidence of record the AAO agrees with the director that the petitioner has not established that the proffered position is more than a bookkeeping or accounting clerk. The *Handbook's* description of the duties of bookkeeping and accounting clerks was quoted in the director's decision and the AAO incorporates that language by reference into the instant decision.

According to the *Handbook*, 2004-05 edition, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions.¹ A four-year bachelor's

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,

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.* Thus, a baccalaureate or higher degree is not required for entry into a bookkeeping or accounting clerk position.

For the reasons discussed above, 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 submitted nine Internet job postings for accountant positions. The AAO is not persuaded that those positions are parallel to the proffered position in this case, however, since the duties of the proffered position are those of an experienced bookkeeping or accounting clerk. Furthermore, only four of the job postings specify that a bachelor's degree in accounting or a related field is required or preferred. Three of the job postings simply indicate that a bachelor's degree is required, without indicating a specialty, and two of the job postings indicate only that experience is required. There is no information in the postings about the size of the advertising companies and their scale of operations. Only one of the advertising companies, Blue Shield of California, appears to be in the health industry. Thus, the Internet job postings do not establish that a bachelor's degree in a specific specialty is common to the petitioner's 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). While the proffered position may involve some accounting among the bookkeeping and accounting clerk functions, the AAO is not persuaded that their level of complexity requires the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting.

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner asserts on appeal that all of its accountants are required to have a bachelor's degree in accounting. As previously discussed, however, the documentation of record does not show that either of the individuals identified by the petitioner as prior accountants ever worked for the company, and no documentation has been submitted of the educational degrees of those individuals. 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)). Also, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the record does not establish that the petitioner normally requires a bachelor's degree in accounting

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, 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.

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. Based on the documentation of record, the AAO is not persuaded that the duties of the position could not be performed by an experienced bookkeeping or accounting clerk with a sub-baccalaureate level of knowledge in accounting or a related field.

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.