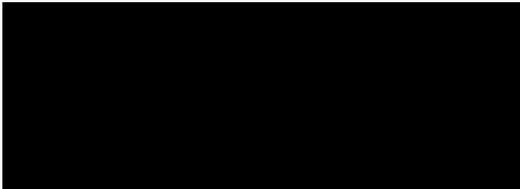




U.S. Citizenship
and Immigration
Services

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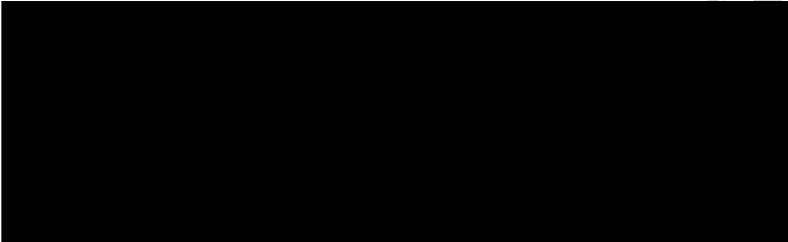
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FILE: LIN 02 273 51971 Office: NEBRASKA SERVICE CENTER Date: NOV 29 2005

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 service center denied the nonimmigrant visa petition and the matter was before the Administrative Appeals Office (AAO) on appeal. The AAO subsequently dismissed the appeal. The matter is now before the AAO on motion to reconsider. The motion will be granted and the petition will be denied.

The petitioner operates a motel/hotel and indicated in the initial petition that it had 8 employees. It 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 proffered position is not a specialty occupation. On motion, counsel submits a brief and previously submitted evidence.

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 record of proceeding before the AAO contains: (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; (5) the petitioner's appeal and supporting documentation (6) the AAO's dismissal of

the appeal and (7) the petitioner's motion to reconsider 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. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail establishing budget methods and procedures; preparing budgets and forecasts; analyzing cost volume profit (break even) structure; analyzing and planning product service profitability; monitoring payroll tax compliance; developing customer credit terms and policies; providing customized management reports; job cost/cost accounting reports; accounts payable, aging and discounts taken/loss reports; current versus prior period reports; actual versus budget variance reports; treasury and cash flow management functions including timing and control of payables; establishing managing line of credit, preparation of cash flow projections and cash flow plans/budgets; recording daily sales and cash expenses; issuing vendor checks from reconciled vendor vouchers; preparing balance sheets; preparing financial statements; maintaining and updating payroll information including payroll taxes and employees' benefits in order to analyze corporate profitability during current versus prior period reports; reconciling payroll taxes; making tax payments. The petitioner indicated in its response to the director's request for evidence that the beneficiary would be employed at one location and his duties will include the integration of three accounting software systems for three distinct corporations owned by the petitioner's owner. The petitioner indicated that the proffered position requires at least a bachelor's degree in accounting or in a related bachelor's level of studies in advanced accounting and business administration experience. The petitioner submitted a balance sheet for [REDACTED] dated May 31, 2002 indicating total assets of \$479,498.25. The Form I-129 indicated 8 employees and a gross annual income of \$237,000.00.

The director denied the petition after determining that the proffered position was not a specialty occupation. The director noted that many of the duties indicated were similar to those of a bookkeeping and accounting clerk. Further, the director found that many of the duties were similar to those of a motel clerk. The director specifically noted that the petitioner stated the beneficiary "shall be responsible for day to day accounting procedures; accounts payable/receivable; auditing and payroll." The director notes that day-to-day duties and routine accounts receivable and payable transactions are not duties normally associated with a corporate or management accountant.

On appeal, counsel asserted that a fair and complete review of all duties, tasks and responsibilities defined the position as one requiring a professional accountant i.e. preparation of three corporate financial budgets, representation of three hotel corporations before various taxing bodies, both federal and local. The AAO dismissed the appeal, finding that the proffered position was not a specialty occupation. The AAO found that the petitioner had established none of the four criteria outline in 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO agreed with the director in that the majority of the duties were those of a bookkeeper, accounting clerks and audit clerks as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*).

On motion to reconsider, counsel contends that the AAO failed to discuss all the duties and review all of the facts set out by the petitioner. Counsel asserts that the record established that the incumbent in the proffered position would maintain budget analysis of the primary corporation and other related corporations, perform financial planning, perform internal auditing and be responsible for information technology consulting as well as corporate counseling. Counsel asserts that the record established that the duties of the proffered position

are “specialized and terribly complex while comports with the requirements for management, business and financial operations occupations found in the *Handbook*.” Additionally, counsel asserts that because the *Handbook* indicates that a bachelor’s degree is required for the position of accountant, the proffered position is an 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 first 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*, 712 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.

A review of the *Handbook* reveals that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, 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.

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 petitioner indicated that it had 8 employees and grossed \$243,000 in receipts or sales on the Form I-129. The petitioner's level of income, volume of business, and number of employees have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. 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.

The *Handbook* reveals 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 record keepers. 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's duties would include recording daily sales and cash expenses; issuing vendor checks from reconciled vendor vouchers; preparing balance sheets; preparing financial statements; maintaining and updating payroll information including payroll taxes and employees' benefits in order to analyze corporate profitability during current versus prior period reports; reconciling payroll taxes;

and making tax payments. As described by the petitioner, the majority of the duties to be performed by the beneficiary are more closely related to those performed by bookkeeping, accounting or auditing clerks.

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.¹ The *Handbook* also states that many graduates of junior colleges and business and correspondence schools, as well as some bookkeepers and accounting clerks, obtain positions as junior accountants.

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.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits various Internet postings for the position of accountant or assistant controller from various companies. One deficiency in the postings is that the companies are obviously dissimilar in size to the petitioner e.g. [REDACTED] and [REDACTED]. Additionally, the duties of the proffered position are not for those of an accountant, as discussed above. No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires the petitioner to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree. As already discussed above, the *Handbook* reveals that many of the beneficiary's duties are performed by bookkeeping, accounting, and auditing clerks, occupations that do not require a bachelor's degree.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. The petitioner states that the duties of the

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, 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.

proffered position are so specialized and complex that a bachelor's degree is mandatory. Counsel asserts that the incumbent would maintain the budget analysis of the primary corporation and the other corporations. The record reveals a list of duties to be performed by the beneficiary for the petitioner and a list of duties to be performed by the beneficiary for Jatin Corporation. The information provided by the petitioner in the record does not clearly establish the corporate relationship between Alpa Corporation and Jatin Corporation. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Additionally, the petitioner's assertions are not substantiated by the facts of the record. The petitioner has not provided any information about the size of the motels or hotels it operates which would establish the volume of business. 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)). The evidence is insufficient to show that the actual duties of the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. As discussed above, bookkeepers manage financial record keeping.

Upon review of the record, the petitioner has not documented the duties of the proffered position in relation to the nature of its business and 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. 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 March 18, 2004 decision of the AAO is affirmed. The petition is denied.