



U.S. Citizenship
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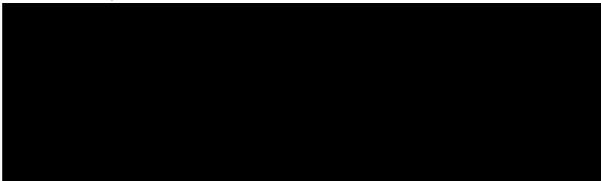
FILE: WAC 04 056 51293 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2005

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, 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 is a cargo forwarding company that seeks to employ the beneficiary as an 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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; 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 an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 performing complex activities associated with maintaining accounts payable, accounts receivable, and payroll; disbursing payment to independent contractors; adjusting journal entries; preparing month-end and year-end closing; developing financial statements and reports such as month-end and audit and cost reports and financial statements; facilitating budgeting, working capital management, product costing, asset management, and control and performance evaluations; totaling, balancing, and reconciling billings; ensuring completeness and accuracy of data accounts; budgeting, forecasting, and completing variance analyses; assisting in preparing the company's annual audit; and assisting in special projects. The petitioner stated that the proposed position requires a bachelor's degree in accounting or finance.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), but that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation, and that performing specialty occupation duties that are incidental to the primary function does not establish that the proposed position qualifies as specialty occupation. According to the director, the petitioner does not have the organizational complexity to require the services of an accountant: it has no bookkeeping, accounting, or auditing clerks to maintain accounting records. The director stated that the petitioner's position requirements are not logical. The director found inconsistencies in the evidence as the proposed position is titled "accountant," but many of the proposed duties such as maintaining the general ledger, reconciling of general ledger accounts and billing voucher are basic bookkeeping and accounting clerical duties that not performed by accountants. The director discussed the holding and relevance of *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which is a case involving evidentiary inconsistencies. According to the director, because the petitioner does not have bookkeeping, accounting, or auditing clerks, the beneficiary would perform these duties; and that the *Handbook* conveys that bookkeeping, accounting, or auditing clerks do not require a bachelor's degree. The director stated that performing some incidental specialty occupation duties such as financial analysis, planning, budgeting, and cost accounting does not establish that the proposed position is a specialty occupation. The director found that although the proposed position requires some financial analysis, the actual duties to be performed are related to bookkeeping, accounting, or auditing clerks. The director discussed the four fields of accounting, public, management, government, and internal; stated that the petitioner does not engage in the type of operation that typically requires the part or full-time services of an accountant; and distinguished the proposed position from that of a management accountant. There is no reasonable expectation, the director

stated, that the petitioner would use the beneficiary solely in the capacity as an accountant or auditor exclusively in the review, analysis, and reporting of accounting records for the requested period. The director stated that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree; and that the petitioner did not have a past practice of requiring the services of an accountant with a bachelor's degree in a specific specialty.

On appeal, counsel states that the petitioner established three of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the director conceded that the proposed duties reflect those of an accountant as that position is described in the *Handbook*. Counsel asserts that although the director states that a petitioner's reliance on the *Handbook* and *DOT* is misplaced, the director bases his denial on the *Handbook's* information. Counsel states the preponderance of the proposed duties parallel those of an accountant's, and references the *DOT*. Counsel claims that the director should have requested a more detailed job description in the request for evidence if the proposed duties were those of an accountant; and that the petitioner did not have an opportunity to elaborate on the proposed position or rebut the director's conclusion that the proposed duties were not those of an accountant. Counsel asserts that according to *Young China Daily v. Chappell*, 742 F. Supp. 552, 554 (N.D. Cal. 1989) the nature and size of an employer and the number of its employees is irrelevant in determining whether a position qualifies as a specialty occupation. Counsel refers to the *Handbook* to show that accountants are employed by companies other than accounting firms, and claims that the *Handbook*, the *DOT*, and the Standard Occupational Classification System (SOC) show that the proposed position qualifies as a specialty occupation. According to counsel, the petitioner employs an administrative/clerical person that will assist the accountant. Counsel maintains that it would be very difficult to conduct a survey to establish that similar businesses require a bachelor's degree in accounting or finance for similar positions. Counsel asserts that CIS has no authority to determine whether or not an employer requires the full or part-time services of an in-house accountant or any other professional worker. The record contains H-1B approvals filed by other companies.

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 record contains H-1B approval notices for cases filed by other employers. This does not establish that that CIS already determined that the proffered position is a specialty occupation since CIS has approved other, allegedly similar petitions in the past. This record of proceeding does not contain all of the supporting evidence submitted to the California Service Center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether these petitions are parallel to the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO next 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.

On appeal, counsel states that the proposed position parallels that of an accountant as that position is described in the SOC and the *DOT*. The *DOT's* specific vocational preparation (SVP) rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and a Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. The *SOC User Guide* can be reached at the Bureau of Labor Statistics (BLS) website (www.bls.gov). The *SOC User Guide* states that the SOC is a classification system that allows government agencies and private industry to produce comparable data by classifying occupations; and that the SOC was designed solely for statistical purposes. Thus, the SOC does not describe whether a particular baccalaureate degree is required for an occupation.

The AAO often refers to the *Handbook* for a comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. Counsel states that the *Handbook* shows that the proposed position resembles an accountant. The director correctly stated that the *Handbook* reports that there are major fields of accounting, which are public, management, government, and internal accountants; of these fields, the AAO finds that the closest category to the proposed position is the management accountant. The *Handbook* relays:

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.

Many of the duties described in the *Handbook* do not apply to the proposed position. According to the *Handbook*, accountants prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities, and usually, they are part of executive teams. The beneficiary is not part of a management team, and the beneficiary will not prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. In light of this significant dissimilarity between the proposed position and the *Handbook's* description of a management accountant, the scope and complexity of the beneficiary's duties and responsibilities are not those of an accountant. Consequently, a bachelor's degree in accounting or a related field – which the DOL states is required for a management accountant – would not be required for the proposed position.

Furthermore, the AAO finds that the level of income generated by the petitioner has a direct and substantial bearing on the scope, complexity, and depth of the proposed duties. Responsibility for income of \$654,702, which the petitioner generated in 2002, differs vastly from responsibility associated with a far larger income. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, in the context of the income generated by the petitioner, the evidence does not establish that the proposed position requires highly specialized knowledge that is at the baccalaureate-level in accounting. 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 AAO notes that *Young China Daily* indicates that an employer's nature, size, and number of employees is irrelevant in determining whether a position qualifies as a specialty occupation. However, these factors differ from how income generated by a petitioner impacts the duties of an accountant.

In addition, for a junior accounting position, to which the proposed position is analogous, the *Handbook* reports that a bachelor's degree is not required. The *Handbook* states:

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.

Furthermore, the *Handbook* states that tax preparers that prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant do not require a bachelor's degree; instead, they require moderate-term on-the-job training.

Counsel's claim that the petitioner did not have an opportunity to elaborate on the proposed position or rebut the director's conclusion that the proposed duties were not those of an accountant is not convincing. The record reflects that in the request for evidence the director sought information to establish that the proposed position qualified as a specialty occupation. Specifically, the director requested a detailed description of the daily work to be done, including the specific job duties and the percentage of time to be spend on each duty; in response to the request for evidence, the petitioner's March 15, 2004 letter gave a more detailed description

of the job duties and the percentage of time to be spent on them. Thus, the petitioner had an opportunity to establish that the proposed position qualified as a specialty occupation.

For the reasons set forth above, the evidence in the record is insufficient to satisfy 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 submitted job postings fail to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. None of the postings relate to parallel positions among similar organizations, and the companies in the postings differ in size and/or scope to the petitioner, which is a cargo forwarding company with one full-time employee, or the nature of the companies is not disclosed.

The AAO will now consider the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires that the petitioner show that its particular position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the beneficiary's duties are not those of an accountant as that occupation is delineated in the *Handbook*, but are more closely aligned with those of a junior accountant. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, in the context of the income generated by the petitioner, the evidence of record, including the submitted accounting journal entries, do not establish the proposed duties as so complex or unique as to require a baccalaureate degree in accounting or a related field. Thus, the petitioner fails to establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

No evidence establishes 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO has already conveyed that the proposed duties differ from those of an accountant, and more closely resembling a junior accountant. Again, responsibility for income of \$654,702, which the petitioner generated in 2002, differs vastly from responsibility associated with a far larger income. While the evidence of record indicates that the proposed duties require some knowledge and application of accounting principles, in the context of the income generated by the petitioner, the evidence of record, including the submitted accounting journal entries, do not establish that the proposed position requires highly specialized knowledge or is so complex as to require the knowledge this is usually associated with the attainment of a baccalaureate degree in accounting. Consequently, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 appeal is dismissed. The petition is denied.