



U.S. Citizenship
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FILE:



EAC 04 095 50147

Office: VERMONT SERVICE CENTER

Date: OCT 04 2005

IN RE:

Petitioner:

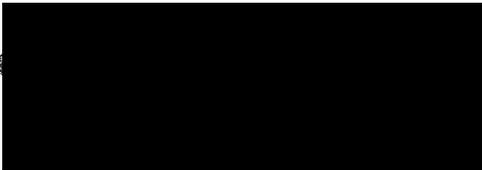
Beneficiary:



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 acting director of the Vermont Service Center director 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 business providing Greek specialty foods at carnivals, state fairs, and other open-air venues in the eastern United States, with nine employees. It seeks to employ the beneficiary as an accountant 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 he determined the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and previously submitted evidence. On appeal, counsel indicates that he intends to submit a separate brief and/or evidence within 30 days. The AAO reviewed this record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129, the petitioner’s February 2, 2004 letter of support, and its March 11, 2004 letter submitted by counsel in response to the director’s request for evidence. As described, the duties of the proffered position would require the beneficiary to:

- Apply principles of accounting to analyze financial information and determine costs of business activity, such as raw material purchases, inventory, and labor, including analyzing changes in raw materials or services provided to determine effects on costs, analyzing actual operating costs and preparing periodic reports comparing standard costs to actual costs, ensuring that correct types and amounts of taxes are paid, and providing advice on deductions, expenses, specific transactions, audits, etc.
- Evaluate the overall costs and risks involved for each service contract, including auditing contracts, orders, and vouchers, and preparing reports to substantiate individual transactions prior to settlement; providing management with reports specifying and comparing factors affecting prices and profitability of services, and preparing a projected income statement annually based on past net income and expenses;
- Oversee and maintain a record of financial transactions, including analyzing data obtained and record results using computer programs, selecting and using a computer-based cost accounting system, designing and setting up an accounting system to facilitate year-end financial reporting, compiling and analyzing financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions, and examining personnel records, cash budgets and balance sheets for patterns relating to inventory turnover and accounts; and
- Ensure that all financial transactions occur within the desired timeframe and are completed to the satisfaction of management, including ensuring that all payments are made in full and on time.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

As the petitioner has identified its proffered position as that of an accountant, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation. As stated at pages 68-69, job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is that of management accountants, who:

[r]ecord 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.

Based on the above discussion, the AAO does not find the proffered position to reflect the scope or complexity of the work of accountants. While it agrees that the petitioner's description of the duties of the proffered position indicates that the beneficiary would require some knowledge of accounting principles, that description does not establish the position as that of an accountant. The decisive question is not whether the petitioner's position requires knowledge of accounting principles – which it clearly does – but whether it normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting. In the instant case, the duties of the proffered position – the determination of the costs of the petitioner's business activity, the evaluation of costs and risk associated with its contracts, and the oversight of its financial transactions – appear to be more closely aligned with the accounting responsibilities of a bookkeeper.

The work of bookkeeping, accounting, and auditing clerks is described in the *Handbook* at pages 437-438:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They have a

wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers.... They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

...

More advanced accounting clerks may total, balance, and reconcile billings vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

...

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases

Based on the record before it, the AAO finds the duties of the proffered position, including the analytical responsibilities identified by the petitioner, to fall within the typical employment of a bookkeeper, who in addition to serving as a business' financial recordkeeper may also be responsible for the development of financial statements, as well as the preparation of financial reports and summaries for managers of the type described by the petitioner. The AAO notes that on page 438, the *Handbook* specifically states that full-charge bookkeepers are called upon to "do much of the work of accountants." Therefore, the proffered position is determined to be that of a full-charge bookkeeper or, perhaps, intermediate employment between a bookkeeper and accountant, such as a junior accountant.

Having determined the proffered position to be that of a bookkeeper or junior accountant, the AAO turns to the educational requirements for these occupations. The *Handbook*, at page 434, states the following regarding the educational requirements imposed on those who seek employment as financial clerks, including bookkeeping clerks:

Most financial clerks are required to have at least a high school diploma. However, having completed some college is becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For occupations such as bookkeepers, accounting clerks, and procurements clerks, an associate's degree in business or accounting

often is required. Some financial clerks have bachelor's degrees in business, accounting, or liberal arts. Although a degree is rarely required, many graduates accept entry-level clerical positions to get into a particular company or to enter the finance or accounting field with the hope of being promoted to professional or managerial positions. Some companies have a set plan of advancement that tracks college graduates from entry-level clerical jobs into managerial positions. Workers with bachelor's degrees are likely to start at higher salaries and advance more easily than those without degrees.

For those seeking employment as junior accountants, the *Handbook*, at page 71, states:

[M]any 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.

As entry-level employment for both bookkeepers and junior accountants may be obtained without a baccalaureate degree or its equivalent, the AAO concludes that the proffered position of bookkeeper does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching its decision, the AAO has taken note of the petitioner's references to the discussion of the responsibilities of accountants and cost accountants provided by the *Dictionary of Occupational Titles (DOT)* and the Specific Vocational Preparation (SVP) rating of 8 it awards to both. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The petitioner has also submitted materials from two Internet career services web sites – Hobsons' College View and The Princeton Review – which indicate that those seeking employment as accountants must hold the minimum of a baccalaureate degree. However, the issue is not whether the occupation of accountant imposes a degree requirement, which it does, but whether the proffered position imposes a degree requirement. In the instant case, the record does not establish the proffered position as that of an accountant. Accordingly, the materials from the two career services web sites are not probative for the purposes of these proceedings.

On appeal, counsel cites two decisions published by the Board of Immigration Appeals (BIA), *Matter of Arjani*, 12 I&N Dec. 649 (Reg. Comm. 1967) and *Matter of Doultsinos*, 12 I&N Dec. 153 (D.D. 1967), as proof that the occupation of accountant has traditionally been found to be a specialty occupation. However, as just noted, the record does not establish the proffered position as that of an accountant. Accordingly, these cases, like the material from the Internet career sites, are not probative for the purpose of these proceedings.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the other alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has submitted seven Internet job advertisements to establish its employment as a specialty occupation under the first prong of the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel asserts that these announcements satisfy the first prong's requirements, as the duties they describe are substantially similar to those of the proffered position and the businesses publishing them are related in industry and "on a similar scope as the petitioner's employees swell during times of performance of their contracts to provide services at various fairs and events." The AAO does not agree. None of the advertisements submitted by the petitioner come from organizations that can be considered similar to the petitioner, a business operating rented specialty food booths at fairs, carnivals and other outdoor venues. Of the seven announcements, one comes from an employer that does not identify its type of business, two are published by firms describing themselves as restaurant companies and four come from restaurants, at least two of which are part of national restaurant chains. Nor does the AAO find the job descriptions provided by the advertisements to establish that the positions they describe are parallel to the proffered position. Of the seven announcements, five do not provide a meaningful description of the job for which applicants are sought and the remaining two describe employment that is much narrower in scope than that outlined for the proffered position. Accordingly, they do not establish the proffered position as a specialty occupation under the first prong of the second criterion.

The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. The AAO finds no evidence in the record that would support such a finding. Therefore, the petitioner cannot establish the proffered position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, the petitioner has indicated that the position is newly created in response to the growth in its business. Accordingly, the petitioner is unable to provide evidence of its normal hiring practices with regard to the proffered position and cannot establish it as a specialty occupation on this basis.

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree. Although the AAO has, once again, reviewed the duties listed by the petitioner in response to the director's request for evidence, it finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by full-charge bookkeepers or junior accountants who routinely work in demanding and complex businesses. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by a full-charge bookkeeper or junior accountant. As a

result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that CIS erred in denying the instant petition because it substituted its own business judgment for that of the petitioner. The AAO does not agree. A petitioner's desire to hire a degreed individual for its proffered employment does not establish that employment as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The AAO also notes that the record in the instant case contains no evidence to support the petitioner's statements regarding its need for an accountant. The petitioner has submitted no documentation to establish its business operations as being of sufficient complexity to require the services of an accountant. Nor has it offered evidence to support its statements regarding the growth of its business, the reason it states it decided to seek the services of an accountant. Simply going on record without supporting documentary evidence is not sufficient for the 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)).

Therefore, for reasons related in the preceding discussion, 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.