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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 055 51972 Office: CALIFORNIA SERVICE CENTER Date OCT 04 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 materials 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 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 is a spa, health, and fitness center. 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 failed to 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 to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 the petitioner indicated that its spa and health facility was established in 1951, had twelve employees and close to \$700,000 in gross annual income, and proposed to hire the beneficiary as a full-time accountant. The duties of the position were described as follows:

[The beneficiary] will handle the preparation of the company's general ledger, monthly and yearly financial reports, monitor information systems, compile and analyze financial information to prepare entries into the accounts. She will detail the company assets, liabilities, and capital and provide tax planning advice . . . review finances and current taxes and devise a long range tax plan and recommend ways to reduce taxes . . and advise and recommend regarding tax strategies, advantages and disadvantages of certain business decisions or transactions. [She] will also be responsible for devising a financial system that will help our company establish a more systematic and smooth inventory procedure.

Moreover, [the beneficiary] will be preparing the company's balance sheets, profit and loss statements, necessary checks, payroll, tax remittances, and other reports to summarize the company's current and projected financial position. Likewise, she will modify and coordinate implementation of the accounting and accounting control procedures . . . monitor the company's budgeting, performance evaluation, cost and assets management . . . [and] prepare the company's letter correspondence with the existing and prospective clients regarding transactions, financing and billing statements. [She] will also be analyzing the transactions and preparing billing statements.

The petitioner stated that the beneficiary was qualified for the proffered position by virtue of her bachelor of science in commerce from the University of Santo Tomas in Manila, the Philippines, granted in March 1991, and her subsequent accounting experience.

In its response to the RFE the petitioner provided additional details about the proffered position, and estimated the percentage of time that would be required to perform the various duty categories. 60% of the beneficiary's time would be spent on accounting services, which the petitioner described as a three-part activity consisting of preparing cash flow projections, financial statement analysis and the preparation of profit and loss statements and balance sheets, and the development of a computerized accounting software system. 5% of the beneficiary's time would be spent on tax services, which includes monitoring and advising on federal and state tax policies and participating in any federal or state audits. 25% of the beneficiary's time would be spent on attestation (auditing) services, which includes conducting all financial, compliance, and operational audits, as needed. 10% of the beneficiary's time would be spent on consultation services, which includes setting up a quality control system and implementing it in accordance with Generally Accepted Accounting Principles (GAAP).

The petitioner also submitted with its response to the RFE a photocopied H-1B petition it had previously filed for another individual, an organizational chart, and some literature about the company.

In his decision the director stated that a records check in CIS revealed that the petitioner already employed an accountant [REDACTED] who was the subject of the earlier petition referenced above and whose H-1B classification had been approved for the time period of August 1, 2003 to August 1, 2006. Though counsel asserted that Ms. [REDACTED] no longer worked for the petitioner, no evidence had been

submitted regarding Ms. [REDACTED] current employment status. Furthermore, the evidence of record did not establish the petitioner's legitimate need for a second accountant, given the small size of the company. In view of the evidentiary discrepancies, which had not been satisfactorily explained by the petitioner, the director determined that the petitioner had not established its eligibility for the benefit sought – *i.e.*, H-1B classification for the beneficiary.

On appeal counsel reiterates that Ms. [REDACTED] is no longer employed as the petitioner's accountant. As evidence thereof counsel has submitted a letter from the petitioner, stating that Ms. [REDACTED] had resigned on November 30, 2003, and a Form I-129 petition filed on her behalf by another company in February 2004. This evidence establishes that the petitioner does not currently employ an accountant, counsel asserts, and therefore has need of one. Since an accountant position requires a baccalaureate degree in a specialty field, thereby qualifying it as a specialty occupation, and the petitioner has employed a duly qualified accountant in the past, counsel contends that the petitioner has overcome the grounds for denial and should have its petition approved.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

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.

Most accounting positions require at least a bachelor's degree in accounting or a related field, as indicated in the *Handbook, id.*, at 70. The *Handbook* goes on to say, however, that some junior accounting positions require less than a baccalaureate degree:

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.

Id. at 71. Thus, although most accounting positions require a baccalaureate degree in accounting or a related specialty, it is possible to enter lower-rung positions in the occupational field with a sub-baccalaureate educational background and/or experience as a bookkeeper or accounting clerk.

The *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

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. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

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. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts, to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents, according to company procedures.

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. They also correct or note errors for accountants or other workers to adjust

. . . . *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 [emphasis added].*

Handbook, id., at 437-38. According to the *Handbook*, at 434, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. A four-year bachelor's 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.* The *Handbook* also indicates that for tax preparers the most significant source of education is on-the-job training. *See id.* at 649.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The record in this case does not establish that the proffered position requires a baccalaureate degree in accounting or a related specialty. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field. The proffered position lacks important attributes of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare financial reports for nonmanagement groups like stockholders, creditors, regulatory agencies, and tax authorities. These functions are not reflected in the petitioner's description of the proffered position's duties. Thus, the scope of the proffered position lacks both the breadth and the depth of a management accounting position.

As previously noted, the petitioner states that it has twelve employees and gross annual income of approximately \$700,000. There are no tax filings, financial statements, DE-6 forms or other employment records, or any other documents in the record to substantiate these figures. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Furthermore, while the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with an asserted annual income in the range of \$700,000 differ greatly from the responsibilities associated with an annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients. The AAO notes that an associate's degree provides basic knowledge about accounting that can be applied on the job by bookkeeping, accounting, and auditing clerks.¹

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, and break even analysis, as well as developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated

Considering the duties of the proffered position and the nature and scale of the petitioner's business operations, the AAO concludes that the position is a combination bookkeeping, accounting, and auditing clerk, as described in the *Handbook*. Many of the job duties – including the preparation of financial reports for management, the compilation of financial information for entry into accounts, documentation of business transactions, the preparation of balance sheets and profit and loss statements, handling employee payroll and other payment obligations of the company, and billing customers – accord with the *Handbook's* description of bookkeeping clerks in small establishments, who “handle all financial transactions and recordkeeping” and whose specific duties include such functions as recording all transactions, producing financial statements, preparing reports for supervisors and management, preparing bank deposits by compiling data from cashiers, verifying and balancing receipts, preparing invoices, and keeping track of overdue accounts. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, and auditing clerk positions, though employers often require a two-year associate's degree in business or accounting. Since bookkeeping, accounting, and auditing clerks do not require a baccalaureate degree in accounting or a related specialty, 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 a series of internet announcements for accountant positions as evidence that a baccalaureate degree is the minimum educational requirement for entry into the occupation. None of the advertising companies is in the same line of business as the petitioner, however, and all of them appear to be much larger than the petitioner in their scale of operations. Accordingly, the internet job postings are not persuasive evidence that that a bachelor's degree in a specific specialty is a common requirement in 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 for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that the previous approval by the California Service Center of another H-1B petition for the same position at issue in this petition, in which the beneficiary (Teresita David) had a baccalaureate degree in a specialty field, establishes that the employer normally requires a specialty degree or its equivalent for the position. The AAO does not agree. There is no documentation in the record of Ms. David's degree, which counsel refers to simply as a bachelor's degree without indicating a specific specialty. In addition, as previously discussed, an employer's self-imposed educational standard, which may not reflect the performance demands of a given position, is not the decisive factor in determining whether it is a specialty occupation. *Cf. Defensor v. Meissner, supra*. Moreover, CIS is not required to approve a petition when eligibility has not been demonstrated – as in the instant case – merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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

commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2 (b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c). The AAO determines that the documentation of record does not establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, 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 a specific specialty. As previously discussed, the AAO is not persuaded by the evidence of record that the duties of the position exceed the occupational scope of an experienced bookkeeping, accounting, or auditing clerk, none of which require specialized knowledge at a baccalaureate level.

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.