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U.S. Citizenship
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FILE: WAC 02 279 54865 Office: CALIFORNIA SERVICE CENTER Date: 04/11/11

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 residential facility for the developmentally disabled. 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 and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a 32-bed boarding and care facility for the developmentally disabled, established in 1993, with twelve employees and gross annual income of \$975,000. The petitioner stated that it proposed to hire the beneficiary as a part-time accountant (20 hours/week) to perform the following duties:

- Budget planning
- Cost accounting
- Financial analysis
- Preparation of required management and government reports
- Application of principles of accounting to analyze financial information and prepare financial reports
- Compilation and analysis of financial information to prepare entries to accounts, such as general ledger accounts
- Documentation of business transactions
- Analysis of financial information detailing assets, liabilities and capital
- Preparation of balance sheets, profit and loss statements and other reports to summarize current and projected company financial positions
- Audit of contracts, orders and vouchers, and preparation of reports to substantiate individual transactions prior to settlement
- Establishment, modification, documentation and coordination of implementation of accounting and accounting control procedures

As explained by the petitioner, record-keeping and analytical tasks would be performed on a daily basis, quarterly reports would be completed over a 30-day period, and annual reports would be completed over a 60-day period. Record-keeping and expenses, disbursements, and general ledgers are completed weekly, the petitioner stated, and require two to four hours of work each week. Accounts receivable are updated and reported weekly, the petitioner stated, and require four to eight hours each week.

The petitioner stated that the beneficiary was qualified for the position by virtue of her academic degree – a bachelor of arts, with a major in economics, from the Centro Escolar University in Manila, the Philippines, granted in March 1978 – and sixteen years of work experience in accounting and related areas.

In response to the RFE the petitioner submitted additional documentation including an excerpt from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* on accountants and auditors, a series of internet job announcements for accountant positions, an evaluation of the beneficiary's academics and experience from a credentials evaluation service, the petitioner's quarterly wage and withholding reports for the calendar year 2003, the petitioner's federal income tax return for 2002, an organizational chart, and job descriptions for each employee position.

In his decision the director stated that the proffered position could not be classified as an accountant for two reasons. The first was that the petitioner's business, as far as the record showed, did not have the organizational complexity to justify an accountant position. While the proffered position may involve some accounting functions, the director determined that the primary duties of the position were those of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. Those positions, as indicated in the *Handbook*, do not

require a baccalaureate or higher degree in a specific specialty. The second reason cited by the director was that the petitioner was not engaged in a type of business for which an accountant would normally be required. The record failed to show that the duties of the position involved complex and advanced accounting functions, the director declared, or that the job duties could not be performed by an experienced bookkeeping, accounting, or auditing clerk with a sub-baccalaureate level of educational training. The internet job postings did not establish that a degree requirement was common to the industry in parallel positions among similar organizations, the director continued, and the petitioner did not show that it had a history of requiring individuals with baccalaureate or higher degrees for the proffered position. Nor did the petitioner demonstrate that the duties of the proffered position were so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The director concluded 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).

On appeal counsel reiterates the petitioner's contention that the duties of the proffered position are those of an accountant, even if some incidental duties could be performed by a bookkeeper. The petitioner has the organizational complexity, the multiplicity of transactions, and business volume to support an accounting position, counsel argues, and the *Handbook's* examples of the types of companies typically employing accountants was misinterpreted by the director as exclusive rather than inclusive. Counsel contends that the previously submitted internet job announcements for accountant positions establish that a degree requirement is common to the industry in parallel positions among similar organizations. Counsel also contends that the duties of the proffered position are so specialized and complex that they require baccalaureate level knowledge in accounting or a related 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.

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.*

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are crucial, not the title of the position. The petitioner must show that the performance demands of the position are consistent with its degree requirement. 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 performance demands of the proffered position require 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 crucial 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, except for a general reference in one of the duties to the preparation of "government reports" which provides no information about what that activity entails. Thus, the scope of the proffered position lacks both the breadth and the depth of a management accounting position.

While the size of a company does not, in and of itself, determine a its need for an accountant, the petitioner's 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 a company like the petitioner, with twelve employees and gross annual income of approximately \$1 million, differ greatly from the responsibilities associated with a multi-million company, or from the responsibilities of performing accounting work for multiple clients. There is no evidence in the record of the volume of business transactions conducted by the petitioner, or of the scope of the financial information to be analyzed. 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)). 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

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 statements and reports for management, the compilation of financial information for entry into accounts, the documentation of business transactions, and the preparation of balance sheets and profit and loss statements – 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, verifying and balancing receipts, 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. The AAO concludes, therefore, 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).

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner has submitted the previously mentioned internet job announcements for accountant positions as evidence that a baccalaureate degree is the common industry-wide requirement for entry into the occupation. None of the five advertising companies is in the same line of business as the petitioner, however, and most or all of the companies appear to be much larger than the petitioner in their scale of operations. Accordingly, the internet job postings are not persuasive evidence that a bachelor's degree in accounting or a related 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).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent for the 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 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

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

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, which do not 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.