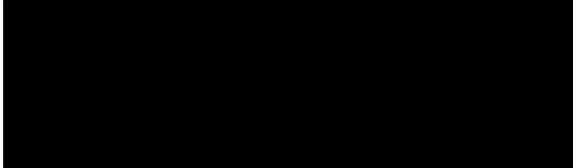


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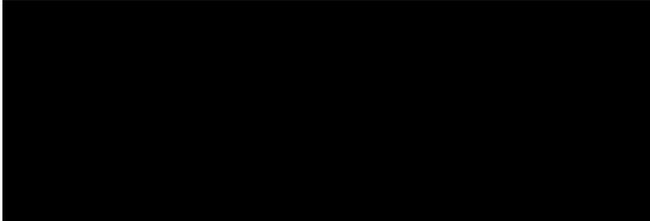
FILE: WAC 04 243 51015 Office: CALIFORNIA SERVICE CENTER Date: APR 25 2006

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 an auto parts retailer 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 finding that the proffered position is not a specialty occupation, and that the beneficiary is not qualified for a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address whether the proposed position qualifies as 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.

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: developing, interpreting, and implementing financial cost accounting concepts for financial planning, budgeting, and general ledger applications; gathering, analyzing, preparing, and summarizing information for financial plans, operations, and budgets; designing and implementing an effective management information and control system; performing technical analysis to determine the present and future financial performance; interpreting information and data related to business activities and translating them to guide management's decision making; researching and improving cost analysis and the accounting and general ledger reporting and analysis processes; contributing in planning to reduce non-value added costs and setting overhead rates and cost reduction efforts; overseeing the preparation of monthly financial statements and quarterly and year-end financial reports; planning costing systems and methods, investment analysis, internal audits, cost audits, fund management, and price planning; coordinating and participating in the annual physical inventory; analyzing pricing proposals against cost calculations; performing budget and forecast project variance analysis; researching, compiling, and tracking industry performance for top competitors; maintaining statistics on key indicators; and implementing a system for future accountants. For the proposed position, the petitioner seeks to employ the beneficiary, who holds a masters degree in accounting from the Ohio State University in Columbus, Ohio.

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 *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as that occupation is 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. The director stated that the petitioner has three accounting positions: an accounting clerk and two accounting managers or executives. According to the director, the petitioner has a sufficient number of personnel to review and supervise, but does not have enough employees to perform basic bookkeeping duties. Thus, the director found that although the proposed position requires some financial analysis, the actual primary duties to be performed by the beneficiary are more closely aligned with those of a bookkeeping clerk. The director discussed *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), a case addressing the reliability of evidence. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity, scale of business, or type of business that requires the services of a part or full-time accountant for any significant length of time. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director found the job postings and job description unpersuasive in establishing the proposed position as a specialty

occupation. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the petitioner's current in-house accountant, who holds a bachelor's degree in accounting, resigned. Counsel states that the petitioner's business and industry is complex, requiring an accountant. According to counsel, the submitted job postings reflect that a broad range of companies, regardless of industry, require the services of an in-house accountant. Counsel states that American's Career InfoNet, the *Handbook*, the *Occupational Information Network*, the *Princeton Review*, and the California Employment Development Department's *Occupational Guide* show that an accountant requires a baccalaureate degree. Counsel maintains that the beneficiary is qualified for the proposed position.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* about the duties and educational requirements of occupations. The *Handbook* explains that specific job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is the management accountant. In the *Handbook*, management accountants — also called cost, managerial, industrial, corporate, or private accountants — record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, and cost 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.

Counsel contends that the position offered here is an accountant and thereby qualifies as a specialty occupation. The petitioner must do more than submit a job description and assert that the position qualifies as a specialty occupation, however. It must submit evidence supporting its contentions. The AAO finds that the evidence of record provides no factual basis to determine whether the offered position is one that normally would require a baccalaureate degree or its equivalent in accounting or a related specialty, or whether the proposed position requires theoretical and practical application of a body of highly specialized knowledge, which in this case is accounting or a closely related field. The record contains the Form 1120S for the years 2001, 2002, and 2003; the Form 941 for the quarter ending June 30, 2004, March 31, 2004, and December 31, 2003; and DE-6 Forms. This evidence is insufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. For instance, there is no information about the types and volume of the petitioner's transactions, the nature of its financial statements and records, the spectrum of costs to be managed by the beneficiary, the extent of the petitioner's financial dealings, the range and scope of the petitioner's financial records, the specific types of data that the beneficiary would analyze, the size of the petitioner's budget, or the number of budget elements, or the nature of the technical, investment, cost, and variance analysis. There is no evidence of previous budgets or financial documents, other than the tax records, illustrating a scope or depth of financial transactions and operations. 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)). Consequently, the petitioner failed to demonstrate a factual basis in which to establish that the offered position is one that normally would require at least a bachelor's degree (or its equivalent) in accounting or a related specialty.

The *Handbook's* subsection "Sources of Additional Information" refers the reader to the Internet site for the Accreditation Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of "verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination."² "Up to two" of the required years of work experience "may be satisfied through college credit."

¹ At its Internet site (<http://www.nsacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The Accreditation Council for Accountancy and Taxation (ACAT) is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests "proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics."

For the reasons discussed 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.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a specific degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submits job postings. However, the companies in the postings are either dissimilar from the petitioner, a small auto parts retailer, or their nature is not disclosed. Advanced Business Connections, Corp., PrideStaff, The Agee Group, Stivers Staffing Services, Inc., Barry Glasser & Company, CyberCoders Accounting, Ellayess, Inc., and Private Capital Management are not described in their postings. Accountemps and Manpower are staffing agencies; Capital Group Companies is an investment management firm; Argus Realty Investors provides investment real estate; Citibank North American and Bridgehampton National Bank are financial companies; Health Net and Blue Shield of California are in the healthcare field; Panduit Corp. is a manufacturer; Bally Gaming Systems is a gaming company; Nauticus Group is a consumer products company; one employer is a Huntington Beach oil company; Wright Travel is a travel agency; Premier Mortgage Funding is a mortgage company; Mercedes Homes, Inc. is a construction company; Spherion represents a construction company; AccountPros represents a holding company. The job postings, therefore, fail to establish a specific degree requirement is common to the industry in parallel positions among organizations similar to the petitioner.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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 in a specific specialty. As discussed earlier in this decision, the record lacks sufficient evidence to establish that the proposed duties are complex or unique, thereby requiring a baccalaureate degree in accounting or a related field. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), that the petitioner normally requires a degree or its equivalent for the position, counsel asserts that the petitioner's prior accountant held a baccalaureate degree, and he submits a copy of the person's resume. Counsel's assertion is not persuasive in establishing this criterion, as one occurrence of employing a person with a baccalaureate degree for the proposed position does not demonstrate a historical pattern of requiring a baccalaureate degree in a specific specialty.

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. As indicated in the discussion at 8 C.F.R. § 214.2(h)(iii)(A)(1), the record lacks sufficient evidence that would establish that the nature of the proposed duties is specialized and complex, and thus, requires a bachelor's degree in accounting or a related field. Consequently, the petitioner fails to establish this last 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.