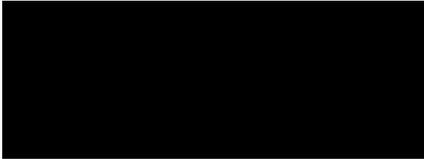


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FILE: WAC 04 216 50946 Office: CALIFORNIA SERVICE CENTER Date: AUG 07 2006

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for *Michael F. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The 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 construction business that seeks to employ the beneficiary as a part-time accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence including a revised organizational chart, an office floor plan, samples of the petitioner's brochures and advertising, and a credentials evaluation for the beneficiary.

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 a part-time accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 24, 2004 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: computing taxes owed; preparing tax returns; preparing, examining, and analyzing accounting and financial records for accuracy, completeness, and conformance to reporting and procedural standards; projecting future revenues and expenses; reporting financial information to management; establishing tables of accounts; assigning entries to proper accounts; developing, maintaining, and analyzing budgets and preparing related reports; developing, implementing, modifying, and documenting record keeping and accounting systems; preparing forms and manuals for accounting and bookkeeping personnel and directing "his/her" work activities; recommending, developing, and maintaining solutions to business and financial problems; and attending to cost accounting. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting, finance, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping, accounting, or auditing clerk position. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a management accountant, and is not an accounting clerk or bookkeeper position. According to counsel, the petitioner is a fast-growing business in need of an in-house accountant to perform complex duties such as "perform[ing] the company's budgets, cost management, costs accounting and assist[ing] in the strategic planning meetings with the principal owner . . ." Counsel states further that, according to the petitioner's organizational chart, there will be bookkeepers and accounting clerks under the beneficiary's supervision.

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 AAO turns first 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; 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)).

At the outset, the AAO notes inconsistencies regarding the number of people that the petitioner employs. Information on the petition that was signed by the petitioner's president/principal owner on July 5, 2004, reflects that the petitioner was established in 1995, and has 18 employees. The petitioner's quarterly wage report for the quarter that ended on September 30, 2004, which was submitted in response to the director's request for additional evidence, reflects only four employees in July 2004, two employees in August 2004, and one employee in September 2004. In view of these conflicting numbers, the petitioner's organizational hierarchy is not clear. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation

of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is also noted that although counsel asserts on appeal that the petitioner is “fast-growing,” she does not provide sufficient evidence in support of her assertion, such as the petitioner’s most recent federal income tax return. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Also noted on appeal is counsel’s statement that the petitioner now wants to reorganize his organizational hierarchy to include “an in-house accountant, bookkeepers, and accounting clerks.” The petitioner, however, must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an accountant. The *Handbook*, 2006-2007 edition, reveals that specific job duties vary widely among the four major fields of accounting: public, management, government accounting, and internal auditing. 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.

In this case, information on the petition reflects that the petitioner is a construction business with 18 employees and a gross annual income of \$575,232.19. On appeal, counsel describes the proposed duties, in part, as “perform[ing] the company’s budgets, cost management, costs accounting and assist[ing] in the strategic planning meetings with the principal owner . . .” As shown in the *Handbook*, bookkeeping, accounting, and auditing clerks produce financial statements and prepare reports and summaries for supervisors and managers, which would be used by them to make sound business decisions. Further, the *Handbook* reports that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate’s degree in business or accounting.<sup>1</sup> The

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<sup>1</sup> According to the website for Skyline College, a community college located in San Mateo, California, ([www.skylinecollege.net](http://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, break even analysis, 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. Thus, an associate’s degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

*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).<sup>2</sup> 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."<sup>3</sup> "Up to two" of the required years of work experience "may be satisfied through college credit."

The evidence of record fails to convey that the beneficiary's specific performance of the record's list of generalized duties would require the theoretical and practical application of highly specialized knowledge attained by at least a bachelor's degree or the equivalent in accounting or any other specific specialty.<sup>4</sup> Furthermore, the level of income generated by the petitioner has a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. Responsibility for the financial transactions described above differs vastly from responsibility associated with a far larger income or from a firm that is responsible for the accounting work of many clients. Counsel's assertion on appeal that the proffered position is that of a management accountant is noted. Without documentary evidence to support the claim, however, the assertion of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The duties described in the *Handbook* do not primarily apply to the proffered 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 will not be part of an executive team. Nor will the beneficiary prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. Given this significant dissimilarity, the scope and complexity of the beneficiary's duties and responsibilities do not rise to the level 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 proffered position. A review of the *Handbook* finds that the proposed

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<sup>2</sup> 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.

<sup>3</sup> 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."

<sup>4</sup> These duties entail primarily the business or accounting associate degree-level activities listed on the Skyline College website.

duties are primarily the duties of bookkeeping, accounting, auditing and financial clerks. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for these positions.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position are described in generalized terms that do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the evidence of record indicates that the proffered in-house accountant position is a new position, the petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.