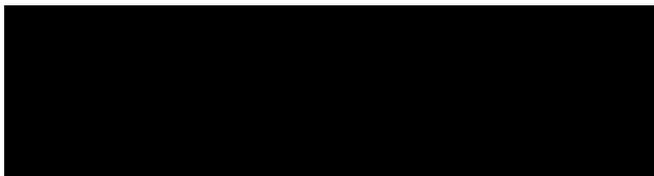




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



D2

FILE: EAC 04 097 50943 Office: VERMONT SERVICE CENTER Date: AUG 25 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.

  
Robert P. Wiemann, Chief  
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 assisted living facility that seeks to employ the beneficiary as an administrative officer/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. On appeal, counsel submits a timely appeal and additional evidence.

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) the Form I-129 and supporting documentation; (2) the director's requests for additional evidence; (3) the petitioner's responses to the director's requests; (4) the

director's denial letter; and (5) the Form I-290B, the brief, 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 administrative officer/accountant, and asserts that it requires a bachelor's degree with a major in accounting, business administration, or a related field. 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 second request for evidence. These documents describe the proposed duties as maintaining records of financial transactions in accordance with generally accepted accounting principles; summarizing and preparing monthly and quarterly financial statements as well as bank reconciliations; preparing budgetary projections and capital expenditure analysis; preparing feasibility studies, project evaluations, and a summary of recommendations; creating and updating resident care plans; directing and supervising day-to-day operations of facilities; directing assignments of work to facility personnel congruent to skills and residents' needs; taking charge of medication, medical forms, reports, evaluations, studies, and charts as required and completing accident/incident reports; and assuming administrative authority, responsibility, and accountability for compliance with federal, state, and corporate guidelines in the operations of an assisted living facility.

The director stated that although the title of the proposed position appears to be generally associated with specialty occupation positions, the submitted evidence as it relates to the petitioner's business operation does not demonstrate that the offered position qualifies as a specialty occupation. The director discussed *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

On appeal, the petitioner's letter states that the proposed position requires a baccalaureate degree, and that it requires the services of an administrative officer/accountant to pursue its corporate vision. The petitioner states that effective management and accurate accounting is needed regardless of the nature of a business. The petitioner discusses the beneficiary's qualifications.

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 2006-2007 edition of 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 *Handbook*, a resource that the AAO routinely consults, 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. According to 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. The petitioner's response to the request for evidence elaborated on the proposed duties.

The petitioner contends that the offered position requires a bachelor's degree in accounting. However, the petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The AAO finds that the submitted evidence provides no factual basis to determine whether the offered position is one that normally would require a bachelor's degree or its equivalent in accounting or a related discipline. The record contains the petitioner's two assisted living facility licenses, which allow for a total of nine beds; the Form 1040 for 2003; the Form 941; the petitioner's standard contract; and a company brochure and photographs of the facility. The AAO is not persuaded that this evidence supports the petitioner's contention that the offered position requires a bachelor's degree in accounting or a related discipline. The record lacks sufficient evidence for the AAO to determine the level of accounting knowledge that the proposed duties require. There is no information about the petitioner's budget, the types and volume of the petitioner's transactions, the nature of its financial statements and records, the accounting and data processing systems and internal control measures to be developed by the beneficiary, the extent of the petitioner's financial dealings, the range and scope of the financial records, the specific types of data that the beneficiary would analyze, or the nature of the capital expenditures. There is no evidence in the record of previous financial documents 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 a bachelor's degree or its equivalent in accounting or a related specialty.

The fact that a position involves accounting principles is insufficient to establish it as a specialty occupation, for not all positions entitled accountant or applying accounting principles require the application of a bachelor's degree level of knowledge in accounting or a related specialty. For instance, 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).<sup>1</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>2</sup> "Up to two" of the required years of work experience "may be satisfied through college credit."

The *Handbook* states that junior accountants have 2 year degrees. It states:

Many graduates of junior colleges or business or 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.

The AAO notes that the petitioner does not explain the relationship between a bachelor's degree in accounting and the proposed duties of creating and updating the resident care plan; directing and supervising the day-to-day taking charge of "medications, medical forms, reports, evaluations, studies and charting"; completing accident/incident reports; and assuming responsibility "for compliance with federal, state, and corporate guidelines in the operations of an assisted living facility." The AAO cannot conclude that such duties normally require a baccalaureate degree in accounting, which is the petitioner's educational requirement for the offered position.

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)(I): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

---

<sup>1</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>2</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."

The petitioner submitted no evidence 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 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. 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).

No evidence in the record establishes 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.

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. The record of proceeding lacks sufficient evidence that would establish that the proposed duties are so specialized and complex as to require a bachelor's degree in accounting or a related field. The petitioner did not submit evidence of its budget, the types and volume of its financial transactions, the nature of its financial statements and records, the accounting and data processing systems and internal control measures to be designed by the beneficiary, the extent of its financial dealings, the range and scope of its financial records, the specific types of data that the beneficiary would analyze, or the nature of its capital expenditures. The record contains no evidence of previous financial documents illustrating a scope or depth of financial transactions and operations. Without such evidence, the AAO cannot determine the nature of the proposed duties and whether the duties are so specialized and complex as to require 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)(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.