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U.S. Citizenship  
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FILE: SRC 04 174 52885 Office: TEXAS 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, Texas Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a food service in two or three locations, with eight employees. It seeks to employ the beneficiary as an accountant. Accordingly, the petitioner 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 determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's September 16, 2004 request for additional evidence; (3) counsel's December 13, 2004 response to the director's request; (4) the director's December 21, 2004 denial letter; and (5) the Form I-290B, with counsel's brief and the petitioner's combined profit and loss statement for 2004. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, 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 the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129 and the petitioner's February 8, 2004 letter appended to the petition. On the Form I-129, the petitioner indicated that the beneficiary's job duties entail: "Processing [a]ccounts payable, payroll details and preparing documentation and managing daily accountings." As described in the petitioner's February 8, 2004 letter in support of the position, the beneficiary in the proffered position would be responsible for the following duties:

- Develop and maintain accounting systems and internal fiscal controls
  - Monitor data flow between external databases and the finance system
  - Ensure that the data is accurate in the system
  - Maintain functioning software
- Internal and external financial reporting requirements
  - Reconcile cash and account statements
  - Handle bank transactions
  - Prepare and [a]nalyze daily, monthly, quarterly and yearly financial statements
  - Entry of all bank activity and assist in the monthly accounting closing process

- Internal fiscal controls
  - Maintain general ledger transaction[s]
  - Prepare monthly closing report and annual financial audit
  - Preparation of account reconciliation
  - Prepare and analyze budget preparation and reporting
  - Perform special financial analysis and research records
  - Prepare monthly and quarterly analytical reports to reconcile various measurements of finance
  - Review and analyze financial reports and statements
  - Maintain cash management by performing daily funding and cash release activities to multiple accounts, and by monitoring daily cash applications to sub-ledger

To make its determination as to whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criteria include whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.<sup>1</sup>

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, degreed accountants do not perform all types of employment that require the use of accounting principles. Thus, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting.

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

The *Handbook's* discussion of the occupation of accountants clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their accounting expertise through experience:

Capable accountants and auditors may advance rapidly; those having inadequate academic preparation may be assigned routine jobs and find promotion difficult. 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 *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

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.<sup>2</sup>

Further proof of the range of academic backgrounds that may prepare an individual for accounting employment is provided by the credentialing practices of the Accreditation American Council for Accountancy and Taxation (ACAT), an independent accrediting and monitoring organization affiliated with the National Society of Accountants. The ACAT does not require a degree in accounting or a related specialty to issue a credential as an Accredited Business Accountant® /Accredited Business Advisor® (ABA). Eligibility for the eight-hour comprehensive examination for the ABA credential requires only three years of "verifiable experience in accounting, taxation, financial services, or other fields requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination." Up to two of the required years of work experience may be satisfied through college credit.<sup>3</sup>

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent.

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<sup>2</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

<sup>3</sup> Information provided by the ACAT website (<http://www.acatcredentials.org/index.html>). The *Handbook* identifies the ACAT website as one of several "Sources of Additional Information" at the end of its discussion of the occupation of accountants.

At the time of filing, the petitioner stated that it employed eight employees, operated a restaurant, was open seven days a week, and frequently held private parties and banquets for its customers. In a September 16, 2004 request for evidence, the director noted that the duties described for the position resembled the duties of a bookkeeping clerk and not that of an accountant. The director requested that the petitioner provide evidence of the industry standard as it relates to a similar type and size company and whether those companies required the services of an accountant and whether those companies required a baccalaureate degree for the accounting position.

In a December 13, 2004 response, counsel for the petitioner repeated the description of duties for the proffered position and stated: "[t]he company is a large size restaurant with three full service restaurants in *three different locations* in the state of North Carolina." The petitioner attached two flyers advertising the restaurant showing that the restaurant had two locations and would be opening a third location soon. Counsel contended that the proffered position required the handling of complex professional duties involving the development and maintenance of accounting systems, internal fiscal controls, and preparing and analyzing financial statement and reports. Counsel noted that the petitioner's revenue for the previous year was more than half a million dollars and that the petitioner expected an increased revenue for the year with the opening of new branches. Counsel also attached the opinion [REDACTED] a professor of accounting and a certified public accountant. [REDACTED] opined in his December 3, 2004 statement, that developing accounting systems, internal fiscal controls, and analyzing financial reports and statements required a mastery of the theoretical foundations of accounting, namely Generally Accepted Accounting Principles (GAAP) and a comprehensive understanding of business administration gained through coursework in all the cores areas of business and advanced coursework or experience in finance, financial management, management information systems, and business statistics. [REDACTED] further commented that staff accounting functions for a growing company with gross annual revenues around a half million dollars a year would require knowledge learned in a baccalaureate or higher degree program in business administration with an emphasis in accounting, economics, or a closely related field.

The evidence submitted by the petitioner is, however, insufficient to establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record indicates that, at the time of filing, the petitioner was a company operating two restaurants with a gross annual income of \$509,448. Subsequent to filing, the petitioner opened a third restaurant. On appeal, counsel indicates that the petitioner has plans for further expansion and that it is the rapid and continuing growth of the company that necessitates a full-time staff accountant. The AAO acknowledges that the process of expanding the petitioner's business operations to multiple locations could potentially establish financial and operational complexities that would require the duties of the proffered position to be performed by a degreed accountant. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose a degree requirement on the beneficiary. However, the AAO also notes that a petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and that 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).

In this matter, the petitioner has submitted flyers to establish its multiple locations and, on appeal, provides a combined profit and loss statement for 2004. However, it has offered no other documentation related to its financial operations or organization that would shed light on the complexity of the accounting work to be performed by the beneficiary, e.g., tax returns or other financial documents to indicate whether its three restaurants operate as separate financial entities or under a single financial structure. Neither has it provided any evidence that would indicate how the petitioner's plans for expansion have affected its financial position. The record does not contain documented evidence of the petitioner's intentions for continued expansion such as tax returns showing complex debt repayment schedules, loan applications, correspondence, or a business plan related to the acquisition of additional restaurants. Accordingly, while the AAO notes that the petitioner now operates three restaurants, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to these three operations or in relation to the petitioner's business expansion plans are sufficiently complex to require the services of a degreed accountant.

The December 3, 2004 letter [REDACTED] also fails to establish that the proffered position is a specialty occupation under the first criterion. Although [REDACTED] clearly indicates that it is his opinion that the minimum educational requirement for the occupation of accountant is a baccalaureate degree, the record does not establish his authority to speak to the national hiring practices of U.S. employers. [REDACTED] claim to be a CPA with more than 45 years experience as a practicing accountant does not demonstrate that he is knowledgeable about national hiring practices. Further, his claim regarding his accounting expertise is not supported by documentary evidence. 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)). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. [REDACTED] opinion is insufficient to overcome the *Handbook's* finding that not all accounting employment requires a degreed accountant.

Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include 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 the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

To establish its degree requirement as the norm within its industry under the first prong of the criterion, the petitioner, on appeal, submits six Internet job advertisements for staff accountants. None, however, satisfy the requirements for establishing an industry standard. Of the six, none of the organizations appear similar to the petitioner, a company operating three restaurants. Instead, they are published by an entertainment development company, an unspecified business in the gourmet restaurant-food service industry, a hotel and marina, a faith-based organization operating spiritual retreats, an accounting firm, and the corporate offices of an 88-member restaurant chain. Neither do they provide descriptions of positions that may be considered parallel to the proffered position, nor establish that a baccalaureate degree is an industry standard for accounting positions. Of the six announcements, only three employers indicate they require a degree in a field directly related to accounting, as required for classification as a specialty occupation.

The AAO also notes that the opinion letter from ██████████ states that a baccalaureate degree in the specific field of business administration with an emphasis in accounting, economics, or a very closely related discipline is an industry standard for staff accountants. However, as previously discussed, the record does not establish the authority of ██████████ to speak to the hiring practices of restaurants seeking accountants. Again, the AAO is not required to accept or may give less weight to that evidence to an opinion not in accord with other information or in any way questionable. *Matter of Caron International*, 19 I&N Dec. at 791. Accordingly, ██████████ opinion with regard to an industry standard is of little evidentiary value in establishing the proffered position as a specialty occupation under the second criterion.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit information related to its financial operations or its business expansion plans precludes it from establishing that the position's complexity or unique nature distinguish it from accounting employment that is performed with less than a four-year degree. Simply going on the 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 190 (Reg. Comm. 1972)). The petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, counsel, in response to the director's request for evidence, asserted that the petitioner had previously employed an independent "CPA" company to perform its accounting tasks. However, the record does not include information regarding the accounting duties performed by the firm, evidence that a degreed accountant actually performed the accounting duties, or evidence that the performance of the accounting duties required or would require a degreed accountant. As a result, the record only shows that the petitioner has previously used an accounting firm, not that it has a practice of hiring a degreed accountant. Again, going on record without supporting documentation is not

sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Accordingly, the petitioner has not established that it previously employed a degreed accountant in the proffered position and has not provided any other evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a bookkeeper or a junior accountant. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a bookkeeper or at most a junior accountant.

In reaching its decision, the AAO has again considered the opinion of ██████████ who indicates that he has reviewed the duties of the proffered position. However, ██████████ does not state that he reviewed financial documents substantiating the petitioner's claim regarding its income, nor that he is knowledgeable in regards to the petitioner's organization. ██████████ does not indicate that he toured the petitioner's restaurant or express restaurant service or interviewed the petitioner. Neither does he relate the duties of the proffered position to the petitioner's actual restaurant business to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinion. The AAO finds that the opinion is not in accord with other information and does not accept the opinion as evidence. *Matter of Caron International*, 19 I&N Dec. at 791. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or junior accountant or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in accounting or business administration with an emphasis on accounting or financial management, or a related field. Mr. Narz' opinion in this matter is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The totality of the record does not establish the proffered position is a specialty occupation based on its complex and unique nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as 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.