



U.S. Citizenship
and Immigration
Services

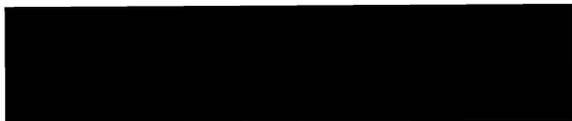
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FILE: WAC 05 078 51457 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2006

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:

SELF-REPRESENTED

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 California 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 importer and distributor of ready to wear apparel for women. It seeks to employ the beneficiary as an internal auditor/accountant. 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 finding that the proposed position fails to qualify as a specialty occupation. The petitioner submitted a timely appeal.

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 request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial

letter; and (5) the Form I-290B and the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an internal auditor/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 RFE. According to this evidence, the beneficiary's duties involve compiling and analyzing information using accounting software to document business transactions and preparing entries to accounts such as the general ledger (20 percent of time); analyzing financial information detailing assets, liabilities, and capital for the preparation of the balance sheets, profit and loss statements, and other reports (20 percent of time); processing, maintaining, and monitoring daily accounts payable and accounts receivable records and preparing and monitoring daily projected and actual cash flow (30 percent of time); directing the preparation of the budget, and analyzing financial statements to determine trends in revenues and expenses so as to project future income, earnings, and expenses (10 percent of time); directing the financial examination and audit to determine the accuracy of sales records and financial reports, the effectiveness of controls over finances and the budget, and the efficiency of business operations (10 percent of time); and compiling, organizing, registering, and filing sales and tax data for local, state, and federal quarterly and annual returns (10 percent of time). For the proposed position the petitioner's April 28, 2005 letter indicates that it requires a degree in accounting or business administration as one of the "usual concentrations for this position."

The director denied the petition. He stated that many of the proposed duties reflect those of an accountant as described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which qualifies as a specialty occupation. However, the director stated that sole reliance on duties resembling those of an accountant as 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 each position must be evaluated based on the nature and complexity of the actual job duties. According to the director, there are two reasons as to why the record is insufficient to classify the proposed position as that of an accountant. The director noted that the first reason is that the petitioner does not have the organizational complexity to require the services of an accountant. According to the director, the beneficiary would perform some incidental accounting duties, but would primarily perform basic bookkeeping and accounting clerical duties, which do not qualify as specialty occupation duties. The director stated that the second reason as to why the proposed position is not an accountant is that the petitioner does not engage in the type of business that typically requires the services of an accountant on a regular full-time basis for a significant length of time, and does not have the scale or complexity to require the services of a full-time corporate accountant or auditor. The director noted that the record does not establish that the beneficiary's duties entail complex or advanced accounting or require knowledge of sophisticated accounting techniques.

On appeal, the petitioner states that it earns \$2.5 million in gross annual sales and anticipates continued expansion and an increase in financial transactions. The petitioner asserts that importing apparel from overseas factories generates a tremendous number of financial transactions including customer billing and invoicing, and requires marketing to U.S. companies. The petitioner states that it has many customers, a high

sales volume, and sending documents and performing internal audits has become burdensome; thus, it needs the services of an internal auditor/accountant. The petitioner notes that the proposed position requires advanced accounting principles and practices. It submits Exhibit "B" to show that CIS previously approved a similar petition filed by the petitioner on behalf of another employee. The petitioner indicates that the use of an outside accounting service for financial and tax affairs resulted in costly mistakes and ineffective procedures.

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 petitioner asserts that CIS has already determined that the proffered position is a specialty occupation since it has approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

The AAO will now consider 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 AAO routinely consults the *Handbook* for information about the education, training, and experience normally required for occupations. The *Handbook* explains that specific job duties vary widely among the four major fields of accounting. 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 his decision the director stated that the petitioner is not in the kind of industry that typically employs an accountant. The AAO does not agree with the director's conclusions regarding the companies or industries employing accountants. The 2006-2007 edition of the *Handbook* indicates that accountants can be found throughout private industry. Notwithstanding this, the AAO does not find that the petitioner would employ the beneficiary in a specialty occupation.

The petitioner asserts that its position is similar to an internal auditor/accountant. 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. It is noted that the record contains the Form 1120S for 2003, and the petitioner's apparel catalogue. However, it does not contain the types of documents that the beneficiary will work with: financial statements, budgets, accounts payable and accounts receivable records, general ledger and journal entries, daily projected and actual cash flow records, or sales records.

The petitioner indicates on the Form I-129 that it currently employs six persons. The 2003 Form 1120S indicates \$83,351 compensation of officers, and reflects no sums paid to employees in 2003.¹ The 2003 return also indicates that the petitioner spent \$2,000 in accounting expenses during 2003, a small fraction of the approximately \$37,000 annually it proposes to pay the beneficiary. The record as constituted is not sufficient for the AAO to determine the level of accounting knowledge required in handling financial transactions for the petitioner. It does not establish that the petitioner would employ the beneficiary as an internal auditor/accountant. 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)).

¹ The organizational chart and the statement of "other deductions" on the 2003 tax return suggest that the petitioner utilizes the services of independent contractors and salesmen who are not employed by the company.

Even though a position involves accounting principles this does not establish it as a specialty occupation, for not all positions applying accounting principles require the application of baccalaureate-level knowledge in accounting or a related field. 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).² 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."³ "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 *Handbook* also states that financial clerks have at least a high school diploma, and for bookkeepers and accounting clerks, employers often require an associate's degree in business or accounting.⁴

² 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.

³ 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."

⁴ The website from Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net) reflects that 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, which is an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

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.

The record contains no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the petitioner must show 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 evidence of the types of documents that the beneficiary will work with: financial statements, budgets, accounts payable and accounts receivable records, general ledger and journal entries, daily projected and actual cash flow records, sales records, or other indicia of complexity. Absent this evidence, the record as constituted fails to establish that the proposed duties are complex or unique and thereby require a baccalaureate degree in accounting or a related field. The record does not establish that the petitioner would employ the beneficiary as an internal auditor/accountant. The petitioner therefore fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the petitioner must normally require a degree or its equivalent for the position. The petitioner states that it previously employed a person holding the educational equivalent of a master's degree in business administration for the proposed position. This is not persuasive, however. A prior instance of requiring a baccalaureate degree or its equivalent in accounting or a related field is not enough to establish a continuing pattern over a length of time of requiring a baccalaureate degree or its equivalent in a specific academic field for the position.

Furthermore, 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 (5th Cir. 2000). The critical element is not the title of the position or 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.⁵ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Here, the submitted evidence is insufficient to establish that the beneficiary would be employed as an accountant/auditor.

⁵ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific academic field. As previously stated, the record lacks evidence of financial statements, budgets, accounts payable and accounts receivable records, general ledger and journal entries, daily projected and actual cash flow records, sales records, or other documentation which is required to establish the nature of the proposed duties. Absent such evidence, the petitioner fails to show that the proposed duties are specialized and complex and therefore require a bachelor's degree in accounting or a related field. Consequently, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.