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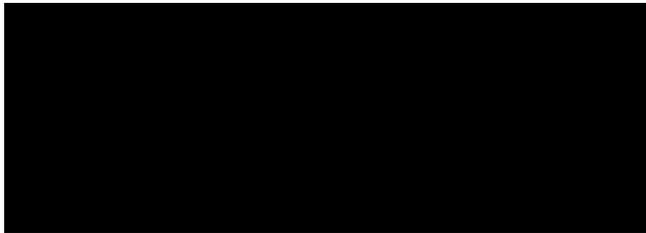
Office: CALIFORNIA SERVICE CENTER

Date: JAN 11 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, 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 engaged in the manufacturing of fabrics and seeks to employ the beneficiary as a part-time 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 because the proffered position is not a specialty occupation. On appeal, counsel states that the proffered position is 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) counsel'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 full-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, analyzing and verifying the quarterly and yearly tax returns, performing audits, preparing payroll statements and deductions, monthly expenses reports and financial statements; assisting management in budget development and control; reviewing and implementing company policies and performing a variety of duties as assigned; performing tax planning and giving tax advice; performing scheduled audits; checking and reviewing office accounts such as receivables, payables, disbursements, payroll, inventory; posting adjustments and balancing accounts, auditing claims; and reconciling transactions and the accounting books; performing a detailed review of the operating procedures, to facilitate streamlining of operations and achieve efficiency; ensuring adequate internal controls are in place and implemented by all the staff; performing special or surprise audits; assisting management in developing and implementing accounting procedures, reviewing and implementing these laws as required; analyzing, evaluating and reviewing existing policies and procedures and making recommendations for changes that will make the company more lean and profitable; preparing correspondence with existing and prospective clients. The petitioner indicated that the beneficiary is qualified for the position and has the equivalent of a bachelor's degree in business administration with a major in accounting.

The director requested additional evidence to establish that the proffered position qualifies as a specialty occupation. The director requested evidence pertaining to the beneficiary's qualifications including a foreign educational credentials evaluation. The director requested a more detailed description of the petitioner's business organization including copies of federal tax returns, state tax returns, quarterly wage reports, payroll summaries and an organizational chart.

In response, counsel asserted that the proffered position is a specialty occupation and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and noted that the *Handbook* indicated that a bachelor's degree is normally the minimum requirement for the position of accountant. The petitioner submitted several internet job postings for the position of accountant that counsel asserts specifically reflects the requirements of manufacturing and retail industries in the United States. Counsel asserted that the petitioner normally requires a degree or its equivalent for the proffered position. Counsel noted that the petitioner employs a junior accountant and a clerk and that the junior accountant possesses a baccalaureate degree in accounting. Finally, counsel asserted that the nature of the specific duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree. Counsel noted that the petitioner will require the incumbent in the proffered position to manage a large number of accounts. The petitioner submitted a copy of its Form 1120S federal income tax return for year 2002 which indicated gross receipts or sales of \$749,725 and salaries or wages of \$8,235 and compensation of officers of \$18,000. The petitioner submitted a W-3 wage summary for tax year 2003 that indicated wages paid of \$226,245.90. The petitioner submitted copies of its Form DE-6 which indicated between 8 and 10 employees in the most recent quarter. The petitioner submitted an organizational chart which included the following accounting positions: a junior accountant and a clerk. The petitioner indicated that payroll services are performed by PAYCHEX. The petitioner indicated on a list of employees that the junior accountant was a college graduate.

The director determined that the proffered position was not a specialty occupation. Referring to the *Handbook*, the director noted that some of the duties described by the petitioner appear to reflect some of

those performed by an accountant and a bookkeeper. The director noted that the petitioner has an approved H-1B accountant on staff and there is doubt as to who would be actually performing the bookkeeping duties. The director stated that if the petitioner gives the title of accountant to an employee who performs some accounting duties but is also performing basic bookkeeping and accounting clerk duties, then CIS cannot consider the proffered position as a specialty occupation, as an auditor or accountant would not perform bookkeeping and/or clerical accounting duties as well.

Additionally, the director found that that the petitioning entity is not a business with operations of a scale or complexity that would require the services of a full- or part-time accountant. The director found that the record is insufficient to establish that the duties include complex or advanced accounting such as regular preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant. The director stated that the record is insufficient to show that the actual duties of the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. Further, the director found that though the petitioner indicated that it had seven employees on the Form I-129, the most recent tax return indicated that the petitioner only paid \$8,235.00 in wages. The director also noted that the petitioner has a previously approved H-1B beneficiary for the position of Secretary/Sales & Marketing Coordinator and that proffered annual wage for this individual was \$33,384.00. The director found that the record indicated that the petitioner paid this individual \$10,530.00. The director concluded that the proffered position does not meet any of the criteria found at 8 C.F.R. §214.2 (h)(4)(iii)(A) and that the petitioner provided misrepresentation through the inconsistent and conflicting record. The director found that the reliability of all the evidence provided with the present petition is in question and is insufficient to establish eligibility for the benefit sought.

On appeal, counsel states that the director incorrectly perceived discrepancies and explained that the petitioner had indicated \$126,275 as a cost of labor on schedule A of its tax return and the employee referred to by the director as not being sufficiently compensated was on maternity leave. The AAO notes that the petitioner did not submit its federal tax return Schedule A in response to the director's request for evidence, therefore; the director did not have the information of the amount of the cost of labor when making his determination.

On appeal, counsel notes that the director indicated that the position of accountant qualifies as a specialty occupation. Counsel notes that the *Handbook* indicates that a bachelor's degree in accounting or a related field is the minimum requirement for entry into the position. Counsel contends that the proposed duties are those of an accountant and not a bookkeeper and that the director did not examine all of the evidence presented. Counsel restates the duties of the proffered position and refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel asserts that the nature of the petitioner's business is irrelevant in determining whether it has a need to employ an accountant.

The AAO does not agree. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., an accountant performs review, analysis and reporting of the petitioner's accounting records or devises financial strategies. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a

specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

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 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.

Counsel assert that the job duties required by the petitioner include numerous tasks listed as job duties for accountants outlined in the *DOT*, supporting his contention that the proffered position is a specialty occupation. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Therefore, the SVP rating is not relevant. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it is described in the *DOT*.

Turning to the *Handbook*, a review of it reveals 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, cost management, 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.

Very few of the duties described in the *Handbook* 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; or be involved in budgeting, performance evaluation, cost management, and asset management. 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.

The petitioner indicated it is a fabric manufacturer with seven employees. The petitioner had gross annual receipts or sales of \$749,725 as indicated in its 2002 Form 1120 federal income tax return. The organizational chart indicates one junior accountant and clerk plus the proffered position.

The petitioner's level of income, number of employees, and complexity of transactions have a direct and substantial bearing on the scope and depth of the beneficiary's proposed duties. The record does not support counsel's contentions that the volume of business and number of accounts establish that the duties require a degree in accounting or a related field. The petitioner has not provided evidence that the proffered duties are so complex and specialized that it is an accounting position requiring a baccalaureate level of education in a specialty occupation. The petitioner has provided no evidence of the multiplicity or types of business transactions that would support its employment of a part-time accountant. 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).

Counsel states that although part of the beneficiary's daily responsibilities might include incidental bookkeeping functions, the proffered position remains that of an accountant. This statement is not persuasive. The *Handbook* reveals that the director properly concluded that many of the beneficiary's duties are performed by bookkeeping, accounting, auditing and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account. . . . They may also review invoices and statements to ensure that all information is accurate and complete. . . . Auditing clerks verify

records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . keep track of a store's inventory. . . .

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded.

The petitioner stated that the beneficiary will be responsible to "check and review office accounts such as receivables, payable, disbursements, payroll, inventory; posting adjust and balance accounts auditing claims; and reconciling transactions and the accounting books." These duties are performed by bookkeeping, accounting, and auditing clerks who update and maintain accounting records that tabulate profit and loss reports. 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.¹

Based on the above discussion regarding the *Handbook's* information about management accountants and bookkeeping, accounting, auditing and financial clerks, the evidence in the record is insufficient to establish 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.

To establish the first alternative prong of the second criterion, an employer may show that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that this particular position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the petitioner submitted sufficient documentation establishing that a baccalaureate or higher degree is normally required for entry into the position of an accountant. The petitioner submitted internet job postings from various companies. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the companies are either obviously dissimilar to the petitioner or the degree requirement is different. For example, Dragonfly Clothing, Inc. indicates that a degree in accounting is preferred. Swaroski is an international producer of crystal products. The Monster.com posting does not

¹ According to the website for Skyline College, a community college located in San Mateo, California, (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 which serve the needs of management and facilitate decision-making.

provide the name of the company advertising for an accountant. The duties of the proffered position are not those of an accountant, as discussed above.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. 214.2(h)(iii)(A)(2), as the evidence of record does not establish that the particular position here proffered is so complex or unique that it can be performed only by a person with a degree in a specific specialty.

The petitioner has not established that it normally requires a degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Although the petitioner asserts that it normally requires a degree for many of its positions, it provided no corroborating evidence such as copies of diplomas or proof of employment. 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 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. The petitioner has not described the specific duties and responsibilities to be performed by the beneficiary in relation to its particular business interests, a fabric manufacturer with an overall staff of seven including one junior accountant and accounting clerk. It has not provided evidence of the complexity of transactions. It cannot be concluded 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. The *Handbook* describes the duties of the proffered position as analogous to those of bookkeeping, accounting, auditing and financial clerks – positions that do not require a bachelor's degree. There is no evidence in the record that would show that the duties of the proffered position rise beyond this level. Consequently, the petitioner fails to establish the fourth 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.