

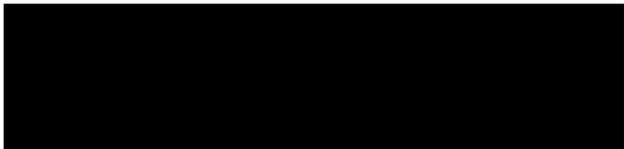
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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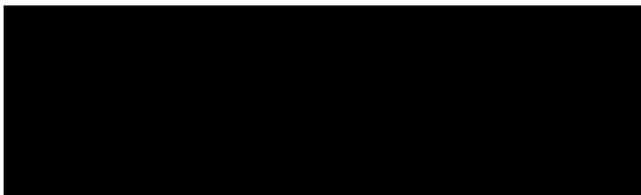
FILE: WAC 03 221 50255 Office: CALIFORNIA SERVICE CENTER

Date: **JUL 23 2007**

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 a wholesale garment manufacturer that seeks to employ the beneficiary as an 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.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching 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) consistently 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 (5th 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 petitioner’s July 16, 2003 letter in support of the petition and counsel’s August 29, 2003 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Develop, maintain and analyze budgets and prepare periodic reports comparing budget costs to actual costs;
- Identify, compute and record definitely determinable and estimated current liabilities;
- Develop, implement, modify and coordinate implementation of sound accounting control procedures and adapt accounting and record keeping functions to current technology;
- Analyze financial information detailing assets, liabilities and capital and prepare balance sheet, profit and loss statement and advise management of the company[’s] current financial situation;
- Prepare schedule of payments such as property tax, insurance premiums and other maintenance bills;

- Account for the cost of property, amortization of building, compute periodic depreciation and record property and equipment transactions;
- Audit contracts, orders and vouchers and prepare reports to substantiate transactions prior to settlement;
- Calculate employees' wages and prepare Social Security and other tax reports; and
- Compile and analyze financial information to prepare entries to accounts such as general ledger accounts, documenting transactions; Create and monitor subsidiary ledgers for individual accounts such as accounts receivable and accounts payable and render report thereon.

In response to the director's RFE, counsel further described the proposed duties as follows:

- Compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions. Create subsidiary ledger for individual accounts such as accounts receivable and accounts payable and monitor those accounts. Construct special purpose journals, such as purchases journal, cash receipts journal, cash payment journal and others as needed by the company. Apply horizontal analysis, trend analysis and vertical analysis to financial statements. Apply ratio analysis to financial statements in the study of the company's liquidity, profitability, long-term solvency and market tests - (30%);
- Set up voucher system to give documentary proof and written authorization for business transactions. Establish a petty cash fund and prepare petty cash vouchers for each expenditure. Reimburse petty cash fund at specific intervals. Track down losses on uncollectable accounts (bad debts) and match them against company's profits. Estimate uncollectable accounts expense. Write off uncollectable accounts. Account for cash and short-term investments. Prepare payroll and checks of employees - (20%);
- Analyze financial information detailing assets, liabilities and capital and prepare balance sheet, financial statements, profit and loss statements and other reports to summarize [the petitioner's] current and projected financial position using computer software. Prepare on a monthly basis, income statement, balance sheet and statement of cash flow. Prepare on a semiannual basis, an owner's equity statement. Prepare on a weekly basis, a cash flow statement. Prepare bank reconciliation. Identify, compute and record determinable and estimated current liabilities. Computer periodic depreciation. Record property and equipment transactions. Apply the matching rule to the allocation of expired cost for capital and expenditures and revenue expenditures. Account for the disposal of depreciable assets. Apply the matching rule to goodwill. Classify variable costs, semi-variable cost and fixed assets. Compute the break-even points. Use contribution margin analysis to estimate levels of sales that will produce planned profits. Prepare periodic and cash budgets - (25%);

- Analyze the forms, records, procedures, processing methods, and reports used by the business. Make minor or major revision[s] where appropriate. Integrate control measures throughout the accounting system - (20%); and
- Negotiate Dental HMO and Medical contracts, negotiate fee[s] and prepare fee schedule for health services - (5%).

The director found that, as the beneficiary is the petitioner's only employee to perform its financial record keeping duties, the proposed duties are primarily those of a bookkeeping/accounting clerk. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the director erred in concluding that the proffered position is primarily that of a bookkeeper and accounting clerk. Counsel states further that the proposed duties are clearly the complex duties of an accountant. According to counsel, the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, and 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.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-07 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time." The petitioner has stated that the proffered position is that of an accountant and has offered a description of the position that lists the duties typically performed by accountants. As discussed by the DOL, management accountants, the category of accounting most closely aligned to the duties described by the petitioner, are individuals who:

[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.

The AAO acknowledges that the above discussion is generally reflected in the petitioner's description of the proffered position. A petitioner, however, cannot establish employment as a specialty occupation by describing the duties of the employment in the same general terms as discussed in sources outlining occupations. Although on appeal counsel claims that the beneficiary would analyze and interpret the petitioner's financial information in order to make sound business decisions and would provide the petitioner with a more specialized budgeting and cost management analysis, counsel does not specify specific tasks that would be performed by the beneficiary in connection with the petitioner's wholesale garment manufacturing business. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as it relates specifically to the petitioner's business. The record contains no documentation that supports counsel's claim regarding the voluminous transactions or that describes the nature and extent of the financial operations required to support its wholesale garment manufacturing business. Although the petitioner has submitted a partial copy of its 2002 tax return showing gross revenues of more than \$6 million, quarterly wage reports for 2002 and 2003, and an organizational chart identifying its employees by title and name, this documentation offers no insight into the business or financial operations that it claims require a degreed accountant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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 submits an excerpt from the *Handbook* as evidence that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for accountants and auditors. The *Handbook* reports, however, that not all accounting employment is performed by degreed accountants. Its 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.

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 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.¹

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,² 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, like that in the instant matter, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient scope and/or 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. Although information on the petition that was signed by the petitioner's president on July 16, 2003, reflects that the petitioner has five employees, the record contains no evidence in support of this claim. The petitioner's quarterly wage report for the second quarter of 2003, ending on June 30, 2003, reflects that the petitioner had one employee in April and May 2003, and two employees in June 2003. The petitioner did not submit a quarterly wage report for the third quarter of 2003. It is also noted that the petitioner submitted only the first page of its 2002 federal income tax return, which reflects no compensation of officers and only \$1,614.00 paid in salaries and wages. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 record does not substantiate the petitioner's number of employees when the petition was filed; neither has the petitioner provided documentary evidence to demonstrate that it is a business with complex financial requirements. The record does not contain evidence, such as complete tax records, audits, sales projections, loan agreements or business plans that document the petitioner's business operations as complex. The petitioner has not provided documentary evidence to establish that it has a complicated financial situation and thus that its business,

¹ 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.

² According to the website for Skyline College, a community college located in San Mateo, CA (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. Thus, an associate's degree would provide knowledge about the GAAP and accounting techniques that serve the needs of management and facilitate decision-making.

despite its relatively limited income and small size, has the complexity of financial operations to require that the proffered position requires a degree in accounting. The duties of the proffered position are not established as those of a degreed accountant. Instead, they appear at most to be more closely aligned to accounting responsibilities that may be performed by junior accountants, employment that does not impose a baccalaureate degree requirement on those seeking entry-level employment. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The record does not include any evidence regarding parallel positions in the petitioner's industry. Nor does the record include evidence from firms, individuals, or professional associations regarding an industry standard. 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. As observed above, the petitioner has not provided evidence that the proffered position incorporates duties that require a sophisticated analysis of complex and intricate principles, but rather has described the routine tasks of a junior accountant who is not required to have a four-year degree. The petitioner has not identified any complex or unique duties that are specifically pertinent to the petitioner's business operations that would require knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. 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 to aid in determining the third criterion. Although the petitioner indicates it was established in 1991, the record does not contain evidence that the petitioner previously employed anyone in the proffered position. It is also noted that counsel does not address this issue on appeal. In view of the foregoing, the evidence of record does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel states, on appeal, that the proposed duties are the complex duties of an accountant. The AAO, however, finds no evidence in the record to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by junior accountants. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a junior accountant. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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.