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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

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FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: DEC 06 2010

IN RE:

Petitioner:  
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: SELF-REPRESENTED

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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[Redacted]

Perry Rhew  
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 assisted living health care facility. It seeks to employ the beneficiary as an accountant 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 concluding that the petitioner failed to demonstrate that the petitioner has offered a bona fide position of accountant to the beneficiary.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B completed by the petitioner with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The AAO will first consider whether the petitioner has offered a bona fide position of accountant to the beneficiary.

In this matter, the petitioner states that it seeks the beneficiary's services as a full-time accountant at a salary of \$28,080 per year.

When it submitted the petition, the petitioner provided a copy of its employment contract with the beneficiary, which states that the beneficiary will have the job title of accountant and will perform duties as follows:

Applies principle of accounting, analyze information and prepare financial reports; compile information to prepare entries to general ledger accounts documenting business transactions. Details assets, liabilities and capital; prepare balance sheet, profit and loss statement and other reports to summarize current and projected financial position; audits contracts and advise management.

The petitioner never states its minimum requirements for the proffered position. The petitioner submitted copies of the beneficiary's foreign education documents, but did not provide a credential evaluation.

On October 20, 2008, the director requested additional information from the petitioner. In part, the director requested the following: (1) documentation to establish that the petitioner has made a bona fide job offer for an accounting position to the beneficiary; and (2) documentation regarding the beneficiary's qualifications.

In response to the RFE, the petitioner describes the proffered duties as follows:

- Record and maintain expense and income accounts;

- Prepare statements of accounts of residents;
- Maintain financial records;
- Prepare financial reports;
- Devise strategies to increase profitability;
- Revise and implement internal control; and
- Monitor aging of receivables.

The petitioner states that the proffered position is newly created.

The petitioner also submitted a letter from another assisted living facility stating that it employs a full time accountant responsible for keeping financial records, recording financial transactions, preparing financial reports, and advising management on financial matters. However, this letter does not provide the employer's minimum requirements for the position it calls an accountant.

The petitioner also provides an organizational chart, which indicates that the petitioner also employs an office manager, a clerk, an administrator, and an assistant administrator, in addition to caregivers and housekeeping staff. The petitioner also provides a list of its employees and their names along with quarterly wage reports.

The director denied the petition, stating that the petitioner's business does not appear to be able to support a full-time accountant. The director pointed out discrepancies between the number of employees listed on the Form I-129 (five) while the other evidence indicated that the petitioner had between 22 and 24 employees.

On appeal, the petitioner argues the proffered position of accountant is bona fide and that the discrepancy in the number of employees was due to a typographical error in the Form I-129. Based on the evidence of record, the AAO finds that the petitioner's explanation for the discrepancy is reasonable. However, while the AAO agrees with the petitioner that it has made a bona fide offer of employment to the beneficiary, the AAO affirms the director's finding that the petitioner has failed to demonstrate that the job offered to the beneficiary is actually that of an accountant. Instead, the proffered position's duties are closer to those performed by bookkeeping, accounting, or auditing clerks.

The description of bookkeeping, accounting, and auditing clerks in the U.S. Department of Labor's *Occupational Outlook Handbook's (Handbook)* (2010-11 online Edition) provides in pertinent part:

Bookkeeping, accounting, and auditing clerks are financial recordkeepers. They update and maintain accounting records, including those which calculate expenditures, receipts, accounts payable and receivable, and profit and loss. These workers have a wide range of skills from full-charge bookkeepers, who can maintain an entire company's books, to accounting clerks who handle specific tasks. All these clerks make numerous computations each day and must be comfortable using computers to calculate and record data.

In small businesses, bookkeepers and bookkeeping clerks often have responsibility for some or all the accounts, known as the general ledger. They record all transactions and post debits (costs) and credits (income). They also produce financial statements and prepare reports and summaries for supervisors and managers. Bookkeepers prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. Additionally, they may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large companies, accounting clerks have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. In addition, their responsibilities vary by level of experience. Entry-level accounting clerks post details of transactions, total accounts, and compute interest charges. They also may monitor loans and accounts to ensure that payments are up to date. More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures.

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

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks use specialized accounting software, spreadsheets, and databases. Most clerks now enter information from receipts or bills into computers, and the information is then stored electronically. The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters and make phone calls to customers or clients.

According to the *Handbook* section on accountants and auditors:

Accountants and auditors help to ensure that firms are run efficiently, public records kept accurately, and taxes paid properly and on time. They analyze and communicate financial information for various entities such as companies, individual clients, and Federal, State, and local governments. Beyond carrying out the fundamental tasks of the occupation—providing information to clients by preparing, analyzing, and verifying financial documents—many accountants also offer budget analysis, financial and investment planning, information technology consulting, and limited legal services.

Specific job duties vary widely among the four major fields of accounting and auditing: public accounting, management accounting, government accounting, and internal auditing.

Under the *Handbook's* description of accountants and auditors, public accountants generally have their own business or work for public accounting firms, government accountants work in the public sector, and internal auditors check for mismanagement, waste or fraud. Since these descriptions of accountants clearly do not apply to the proffered position, the focus of the AAO's analysis will be on whether the proffered position is that of a management accountant.

According to the *Handbook*:

Management accountants . . . record 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. *Usually, management accountants are part of executive teams involved in strategic planning or the development of new products.* They analyze and interpret the financial information that corporate executives need 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.

(Emphasis added.) Under the *Handbook's* description, it therefore appears to be unusual for small businesses to employ a full-time management accountant, since management accountants are usually part of executive teams and prepare financial reports for other entities in addition to their employer. Thus, it is incumbent upon the petitioner to demonstrate it has sufficient work in a specialty occupation to hire an accountant on a full-time basis.

Because it is not clear that the petitioner's business justified the hiring of a full-time accountant based on the initial petition, the RFE requested additional documentation in this regard. The only evidence that the petitioner provided was a letter from another assisted living facility, which described duties that also appear to be closer to those performed by bookkeeping, accounting, and auditing clerks rather than accountants.

The AAO acknowledges that some of the duties described by the petitioner are similar to those under the section on accountants and auditors in the *Handbook*. However, as discussed above, because the petitioner did not provide supporting evidence to demonstrate that it has sufficient work in a specialty occupation for the beneficiary to perform on a full-time basis, the AAO finds that the proffered occupation is not that of a full-time accountant or auditor. Instead, it more closely resembles the positions described under the *Handbook* section on bookkeeping, accounting, and auditing clerks. Therefore, the AAO finds that the proffered position is not that of an accountant and therefore the petitioner has not made a bona fide job offer of an accountant to the beneficiary. The petition is therefore denied for this reason.

Beyond the decision of the director, the AAO also finds that the petitioner failed to establish that the proffered position is a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term “specialty occupation” as one 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561

(1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty 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)).

As discussed above, the AAO finds that the proffered position most closely resembles that found under the *Handbook*’s section on bookkeeping, accounting, and auditing clerks. With respect to education and training requirements for bookkeeping, accounting, and auditing clerks, the *Handbook* states:

Most bookkeeping, accounting, and auditing clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or accounting is required for some positions. Although a bachelor’s degree is rarely required, graduates may accept bookkeeping, accounting, and auditing clerk positions to get into a particular

company or to enter the accounting or finance field with the hope of eventually being promoted.

In other words, a bachelor's degree in a specific specialty is not required.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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.

As the *Handbook* indicates no specific degree requirement for employment as a bookkeeping, accounting or auditing clerk, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has failed to establish its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

The petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As discussed previously, although the duties described by the other assisted living facility are likewise closer to those performed by bookkeeping, accounting, and auditing clerks than by accountants, the letter from the other facility provided by the petitioner does not state the minimum requirements for the position it allegedly employs. Even if it did, a letter from a single facility is hardly indicative or representative of a common degree requirement for the proffered position in the petitioner's industry. As a result, the petitioner has not established a degree requirement in parallel positions.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” The evidence of record does not refute the *Handbook's* information to the effect that a bachelor’s degree or its equivalent is not required in a specific specialty. As evident from the generalized description of the proffered position and its duties, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than bookkeeping, accounting, or auditing clerk positions that can be performed by persons without a specialty degree or its equivalent.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor’s degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position’s duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO does not find that sufficient evidence was provided to demonstrate that the proffered duties, as described by the petitioner in its initial support letter, reflect a higher degree of knowledge and skill than would normally be required of bookkeeping, accounting, and auditing clerks who have responsibility for the accounts and financial statements. The AAO, therefore, concludes that the petitioner failed to establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petition shall be denied on this additional ground.

The AAO does not need to examine the issue of the beneficiary’s qualifications because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Therefore, the AAO need not address the beneficiary's qualifications further, except to note that the petitioner has not demonstrated that the beneficiary has at least a U.S. bachelor’s degree or the equivalent in any field as the petitioner did not submit a credential evaluation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.