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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

§ 2



FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2010

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:  


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, with a fee of \$630. 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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a food manufacturer and distributor and claims to have 39 employees. It seeks to employ the beneficiary as an accountant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition determining that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's March 2, 2009 request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's May 13, 2009 denial letter; and (5) the Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must 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.

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. *Cf. 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.

The petitioner seeks the beneficiary's services as an accountant. In its January 21, 2009 letter of support, the petitioner indicates that the beneficiary's job duties are as follows:

- 1) **Analysis and preparation of financial statements –**  
[The beneficiary] will continue to be responsible for financial analysis. He will evaluate and compile financial information to prepare entries to accounts, such as general ledger accounts, to document

business transactions in accordance with generally accepted accounting principles (GAAP). This aspect of the job will also require him to perform variance analysis, thus be able to determine possible discrepancies, the tax implications of any variance noted, and how to avoid errors. [The beneficiary] will prepare financial statements, balance sheets, profit and loss statements and other accounting reports. He will also be responsible [for the] timely submission of all required reports and tax remittances to concerned government agencies.

**2) Budget Preparation –**

The job will also include budget preparation. In this regard, [the beneficiary] will analyze the company's past and present financial operations. Additionally, he will estimate future expenditures based on the schedule of program activities, goals and directives of the management. [The beneficiary] will be expected to formulate proposals directed towards efficient allocation and use of company resources. He will prepare operating and capital budget summaries, and will present to the management several investment scenarios and assumptions based on available resources, and priority projects to be undertaken. It is also part of the job of [the beneficiary] to monitor the disposition of the funds and to provide control over expenditures to ensure compliance with approved budgets.

**3) Preparation of Projections –**

[The beneficiary] will continue to institute check and balance, and will examine expense, assets, and liabilities. In addition, he will prepare schedule of payments, showing where cash will be coming from and where expenses will be applied to. On a regular basis, [the beneficiary] will coordinate with production and sales departments to determine volume of operations and sales, and will monitor job orders and delivery reports. He will submit reports to show the company's current and projected cash position.

**4) Develop inventory and internal control procedures –**

One of the most significant aspect[s] of the job of [the beneficiary] involves monitoring inventory for control purposes. He will continue to implement internal control procedure to avoid loss, variance, and mismanagement. He will be responsible for ensuring sufficient control measures are in effect and being followed.

**5) Implement sound accounting systems in adherence to GAAP –**

- Overall, the basic responsibility of [the beneficiary] is to develop and implement a sound accounting [system] of operations and control based on generally accepted accounting principles, and in compliance with company regulations.

The petitioner further claimed that the duties of the position required “the application of a specialized knowledge leading to a degree in accounting, or business administration.”

In the RFE dated March 2, 2009, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed information regarding the nature of the petitioner's employer-employee relationship with the beneficiary, as well as the organizational structure of the petitioner. In response, the petitioner submitted a letter dated March 23, 2009, in which it addressed the director's requests. The petitioner indicated that the beneficiary has been directly

employed by the petitioner since July 2002. The petitioner also submitted documentary evidence such as a copy of the petitioner's job posting for the proffered position, as well as information pertaining to its other H-1B nonimmigrant employees. Finally, the petitioner submitted a statement dated March 12, 2009 in which its president affirmed that due to the increasing volume of the petitioner's financial transactions, the company needed the full-time services of the beneficiary as an accountant. Furthermore, the petitioner contended that it always required an individual with a bachelor's degree for the proposed position.

On May 13, 2009, the director denied the petition. While the director noted that the description of duties provided by the petitioner in some ways coincided with the duties of an accountant as set forth in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director found that the petitioner had not demonstrated that the level, scope, and complexity of the petitioner's business actually required an individual with a bachelor's degree to fill the proposed position. The director specifically noted that the description of duties for the proffered position included general bookkeeping duties, such as maintaining payroll records and organizing accounts payable and receivable. Consequently, the director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was erroneous. Specifically, counsel contends that the position is in fact an accounting position, and notes that the duties of the proffered position are professional in nature and are not bookkeeping functions. Moreover, the petitioner also takes issue with the director's reliance on the nature and scope of the petitioning entity when rendering the decision. No additional evidence is submitted.

To make its determination as to whether the employment just described qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion 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.

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the vague and general duties described by the petitioner. As stated by the *Handbook*, management accountants:

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

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<sup>1</sup> *Occupational Outlook Handbook*, 2008-2009 Edition, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

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

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

Some 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 accountant positions by demonstrating their accounting skills on the job.

Most beginning accountants and auditors may work under supervision or closely with an experienced accountant or auditor before gaining more independence and responsibility.

The *Handbook* also notes in its description of the work performed by bookkeeping, accounting and auditing clerks that:

Clerks who can carry out a wider range of bookkeeping and accounting activities will be in greater demand than specialized clerks. For example, demand for full-charge bookkeepers is expected to increase, because they can perform a wider variety of financial transactions, including payroll and billing. Certified Bookkeepers (CBs) and those with several years of accounting or bookkeeping experience who have demonstrated that they can handle a range of tasks will have the best job prospects.<sup>2</sup>

To determine whether the accounting knowledge required by the proffered position rises above that which may be acquired through experience or an associate's degree in accounting, the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business may not normally be 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, as correctly noted by the director. The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only

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<sup>2</sup> *Occupational Outlook Handbook*, 2010-2011 Edition, at [www.bls.gov/oco/ocos144.htm](http://www.bls.gov/oco/ocos144.htm).

through a baccalaureate degree or higher in accounting or its equivalent.

At the time of filing, the petitioner stated that it commenced business operations as a food manufacturer and distributor in 1997, and claimed to currently employ 39 employees. Based on a review of quarterly tax returns submitted in response to the request for evidence, it appears that the petitioner's claimed staffing levels are supported by the record. However, while the petitioner claimed to have a gross annual income in excess of \$4,000,000, no tax returns or other statements of income were submitted to corroborate this claim.

In response to the request for evidence and again on appeal, the petitioner indicates that it has plans for further expansion and that it is the rapid and continuing growth of the company that necessitates a full-time staff accountant. The AAO acknowledges that the process of expanding a business's operations could potentially establish financial and operational complexities that would require a degreed accountant. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the accounting employment described by the petitioner would impose such a degree requirement on the beneficiary. Despite submitting some financial reports prepared by the beneficiary, as well as a copy of the petitioner's catalog of products, this documentation is insufficient with regard to its financial operations or organization, and does not shed light on the complexity of the accounting work to be performed by the beneficiary.

The *Handbook* describes the position of bookkeeper as follows:

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.

As noted above, the petitioner submitted copies of financial reports prepared by the beneficiary as evidence of his work product. The description of the duties of a bookkeeper, which include the preparation of financial reports, appears to accurately describe the duties of the proffered position.

The *Handbook* describes the educational requirements of a bookkeeper as follows:

Employers usually require bookkeeping, accounting, and auditing clerks to have at least a high school diploma and some accounting coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.

***Education and training.*** 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.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Accordingly, the record offers no meaningful evidence to establish that the accounting duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed accountant. As discussed above, and despite the petitioner's claims to the contrary, the proffered position appears more likely than not to be that of a bookkeeper, a position which does not require an individual who holds at least a bachelor's degree in a specific specialty or its equivalent. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to prove that a degree requirement is common to the industry in parallel positions among similar organizations, or the particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining this criterion include whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). In the instant matter, the petitioner has not submitted evidence that responds to either prong of the criterion.

The petitioner submitted no evidence, such as job postings from similar companies, to establish its degree requirement as the norm within its industry under the first prong of the criterion. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit sufficient information related to its financial operations or its claimed business expansion plans precludes it from establishing that the position's complexity or unique nature distinguish it from accounting-related employment that is performed with less than a four-year degree in a specific specialty or its equivalent. 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)). Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, the petitioner asserted, in response to the director's RFE, that it routinely required a bachelor's degree for the proffered position and submitted a copy of three previous job advertisements for the position of accountant, from 2004, 2009, and an unknown year. While the AAO notes that two postings list "Bachelor's" and one lists "B.S. Accounting" as the minimum education requirement, these job postings do not constitute evidence of the petitioner's hiring practices. The

petitioner has submitted no documentation, such as payroll records and educational transcripts, demonstrating that it normally requires a degree or its equivalent for the position of “accountant.” While the AAO notes that quarterly tax returns are submitted, these documents are not sufficient, without further evidence pertaining to the employment history of its claimed accountant(s), to demonstrate that the petitioner normally requires a degree for the proffered position. Although the petitioner submits copies of the H-1B approval notices for the beneficiary and two other employees, these employees were employed as food technologists, not accountants. Therefore, since the petitioner has not established that it previously employed a degreed accountant in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>3</sup>

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

In reaching its decision, the AAO has again considered the petitioner’s letters dated January 21, 2009, March 12, 2009 and March 23, 2009. All of these letters provide a vague and generalized overview of accounting duties. However, absent additional evidence, such as financial documents substantiating the petitioner's claim regarding its staffing and income, there is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical bookkeeper or junior accountant or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in accounting.

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<sup>3</sup> To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner’s perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor’s degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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