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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

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FILE: EAC 09 082 51853 Office: VERMONT SERVICE CENTER Date:

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 company that owns a Dunkin Donuts and four other businesses that sell coffee and donuts with 14 full-time employees, 12 part-time employees, and a gross annual income of over \$2 million. 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 establish that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in 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 additional evidence (RFE); (3) the petitioner's submission of a new petition with a statement from counsel that it does not need to respond to the director's RFE; (4) the director's denial letter; and (5) the Form I-290B and brief submitted by counsel. The AAO reviewed the record in its entirety before issuing its decision.

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

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 (5th 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.

In this matter, the petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s December 31, 2008 support letter; and counsel’s letter in response to the RFE. The support letter together with the RFE indicates the proffered position would require the beneficiary to work as an accountant and perform the following duties:

- Analyze financial information detailing assets, liabilities and capital, and prepare balance sheets, profit and loss statements and other reports to summarize the current and projected financial position of the companies (20% of the time);
- Establish, modify, document and coordinate implementation of accounting and accounting control procedures as well as incorporate both franchise requirements and independent strategies (18% of the time);
- Audit contracts and vouchers and prepare reports to substantiate individual transactions (10% of the time);
- Prepare and submit weekly, monthly and quarterly sales reports and profit & loss statement (15% of the time);
- Coordinate with President and management about financial matters, such as banking and cash on hand (10% of the time);
- Advise President and management team regarding the overall budget and individual project budgeting (18% of the time); and
- Consolidate and prepare documents for preparation of tax returns for payroll taxes, sales taxes and income taxes (9% of the time).

The petitioner provides the purpose for creating the position of accountant (with IT related work) as follows:

At present, [the petitioner's] main business consists of growing and managing the investment of these donut and retail shops. Currently, we employ an outside accounting firm, which has served our needs in a limited capacity for the past ten years. However, as we grow in size, complexity, and volume, we have commensurately developed a need for an in-house accountant to manage our accounting issues. An accounting position at this level will grant us greater scope and efficiency in making the financial decisions which rest on this vital function as we turn our attention to the further grown and development of our company. Indeed, the addition of an in-house accountant at this level of business is a well-established industry practice. For the continued growth, development, and maintenance of [the petitioner's] competitive business an in-house accountant is an imperative.

* * *

Due to the nature and complexity of the work involved in this position, we require the position holder to possess a Bachelor's degree in Accounting.

The petitioner submitted copies of the beneficiary's diploma and grades for a Bachelor of Commerce degree from Gujarat University, a foreign university. The grades for April 1999 are not certified – instead, the word “cancelled” is written in the certification box. Copies of certified Statements of Marks are provided for November 1999, March 2000 and April 2001. The educational evaluation submitted evaluates three years of undergraduate coursework together with 14 months of additional computer education courses as equivalent to “an individual with a Bachelor of Business

Administration Degree with a Computer Science minor from an accredited college or university in the United States.”

The Labor Condition Application (LCA) was submitted for an Accountant to work at the petitioner’s offices in Norristown, PA at an annual salary of \$34,466.

On January 28, 2009, the director requested additional information from the petitioner. In part, the director requested the following: (1) documentation highlighting the nature, scope and activity of the petitioner’s business in order to establish the beneficiary will be employed in the proffered position, which could include a more detailed description of the work to be performed; and (2) evidence that a bachelor’s degree in a specific field of study is a standard minimum requirement in the petitioner’s company or industry for the proffered position.

Counsel for the petitioner responded to the RFE by reiterating the duties provided with the initial petition and arguing that these duties come under the section in the U.S. Department of Labor’s *Occupational Outlook Handbook*, 2008-09 Edition (*Handbook*) on accountants and auditors. Counsel further argues that because the profession of accountant traditionally has been viewed as a specialty occupation, that the proffered position is also a specialty occupation. Counsel does not provide the documentation highlighting the nature, scope and activity of the petitioner’s business, nor does he provide evidence that a bachelor’s degree in a specific field of study is a standard minimum requirement in the petitioner’s industry for the proffered position, as requested in the RFE.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. The director further found that the evidence of record does not establish that the beneficiary is qualified to perform services in the specialty occupation of accountant.

On appeal, counsel asserts that the proffered position is a specialty occupation because it is that of an accountant and that the information provided by the petitioner is sufficient to establish that the proffered position is that of an accountant. Additionally, counsel argues that the petitioner is sufficiently large and complex to justify the hiring of an accountant. Counsel further asserts that the beneficiary is qualified to perform in the duties of a specialty occupation under *Button Depot, Inc. v. U.S. Dept. of Homeland Security*, 386 F. Supp. 2nd 1140 (C.D. Cal. 2005). Counsel states that “[the beneficiary] has achieved a foreign Bachelor’s degree in Accounting and Auditing, and along with his combined experience and course work in the field of Computer Science, he has an equivalent of a Bachelor’s of Business Administration with a Computer Science minor.”

To make its determination whether the proffered position, as described in the initial petition and the petitioner’s response to the RFE, qualifies as a specialty occupation, the AAO 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 U.S. Department of Labor's Occupational Outlook Handbook, 2008-09 Edition (*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, on appeal, counsel for the petitioner argues that the proffered position most closely resembles the position of accountant in the *Handbook*. However, upon review, the AAO affirms the director's finding that the proffered position most closely resembles that found under the *Handbook's* section on bookkeeping, accounting, and auditing clerks.

The *Handbook's* description of bookkeeping, accounting, and auditing clerks 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 stated:

The evidence submitted does not establish that the job offered qualifies as a "specialty occupation" nor did you submit evidence that in your company, a baccalaureate degree is the standard minimum requirement for the job offered. It should be noted that it is not the title of a position that determines qualification. Rather, it is the duties and responsibilities.

This additional evidence was requested by USCIS in order to determine whether the proffered position was a specialty occupation as insufficient information was provided initially. Instead of providing documentation demonstrating that the petitioner requires a full-time accountant, which might have included such documents as a letter from the petitioner's current external accounting firm stating the amount of time that is or will be required for an accountant to perform the work as described by the petitioner, or job advertisements, expert opinion letters, etc. to show that businesses similar to the petitioner require a full-time accountant, counsel instead argues that the petitioner's letter, without supporting evidence, is sufficient to demonstrate that the proffered position is that of an accountant as described in the *Handbook*. However, 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)). Without a detailed explanation and supporting documentation from the petitioner as to why its business, which entails a Dunkin Donuts and three other coffee and donut establishments employing a total of 14 full-time and 12 part-time workers (the job titles of which were never provided), requires a full-time accountant, the evidence is insufficient to determine that the proffered position is a specialty occupation.

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.

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 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 is unable 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.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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. The petitioner and

counsel have not submitted any advertisements or other documentation to establish its degree requirement as an industry norm. 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 is not required in a specific specialty. As evident in the earlier discussion about the generalized descriptions 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 proffered position cannot be established 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 AAO shall not disturb the director’s denial of the petition.

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. Moreover, the AAO need not address counsel’s argument that the beneficiary qualifies for the proffered position under *Button Depot, Inc. v. U.S. Dept. of Homeland Security*, 386 F. Supp. 2nd 1140, because the AAO has determined that the proffered position is not that of an accountant or auditor. However, the AAO further notes that the petitioner in its support letter stated that “[w]e require the position holder to possess a Bachelor’s degree in Accounting.” The petitioner does not state that it will accept a bachelor’s degree in another field for the proffered position. Moreover, as the evaluation submitted is based, in part, on at least one education document that was cancelled, it is not acceptable in evidencing that the beneficiary has the equivalent of a U.S. bachelor’s degree. However, even if it were valid, the evaluation indicates that

the beneficiary has the equivalent of a bachelor of business administration degree with a computer science minor from an accredited college or university in the United States, which means that the beneficiary does not even meet the minimum qualifications as described by the petitioner.

The appeal will be dismissed and the petition denied. 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.