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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090



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

*Δ<sub>2</sub>*

[REDACTED]

Date: **APR 22 2011**

Office: [REDACTED]

FILE: [REDACTED]

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:

[REDACTED]

**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,

*Michael T. Kelly*  
Perry Rhew  
for Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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.

On the Form I-129 visa petition, submitted April 1, 2009, the petitioner stated that it is a “board and care home” established in 2006 that currently has five employees. It also stated that it has gross annual income of “Approx 650000.” To employ the beneficiary in what it designates as an accountant position, the petitioner endeavors to classify him 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director’s basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which (1) 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 (2) 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 a particular position 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry

requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The record shows that the petitioner operates at least three care homes. The petitioner, [REDACTED] filed the instant visa petition in order to employ the beneficiary at [REDACTED]. However, the visa petition provided [REDACTED] as the petitioner's mailing address. A license from the California Department of Social Services shows that the petitioner operates [REDACTED] at that address. Another license shows that the petitioner operates [REDACTED].

Invoices in the record show that the finances of those three locations are comingled, which confirms that they are operated by the same company, to wit: the instant petitioner. The AAO is unable to reconcile those three locations – each of which presumably has at least one employee on each of perhaps three shifts, presumably seven days per week – with the fact that the petitioner has only five employees.

The AAO notes that, although the petitioner claimed, on the visa petition, to have gross annual income of approximately \$650,000, the record contains a 2008 Form 1120S, U.S. Income Tax Return for an S Corporation shows that it had gross receipts or sales of only \$196,217 during that year.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

With the visa petition, counsel submitted an undated letter from the petitioner's CEO. That letter states:

[The beneficiary] will manage all financial information for [the petitioner]. She will handle all company budgeting, cost management, and assets. She will be involved in all planning and strategic development of new company products. She will be making sure proper financial information is provided to the corporate executive so proper business decisions can be made. She will make sure all proper financial information is provided to all necessary agencies. She will handle all financial reporting for the company. Based on her duties she will provide some tax help and help to develop budgets and manage company needs.

The CEO also stated that the position requires a minimum of a bachelor's degree or the equivalent in accounting. Previously in the letter, the petitioner's CEO stated that she had handled the duties of the proffered position during the previous two and a half years with the assistance of a part-time

bookkeeper. The record contains no evidence that the petitioner's CEO has a degree in accounting or the equivalent.

Because the evidence was insufficient to establish that the petitioner would employ the beneficiary in a specialty occupation, the service center, on May 15, 2009, issued a RFE in this matter. The service center requested that the petitioner provide evidence to demonstrate that the proffered position is a *bona fide* position for an accountant and, in addition, a position in a specialty occupation. The service center also specifically requested that the petitioner demonstrate that it had previously employed an accountant in the proffered position.

Counsel responded with a letter, dated June 24, 2009. In it, she stated that the petitioner's CEO was currently performing the duties of the proffered position with the assistance of a part-time bookkeeper, and that the petitioner had never previously employed an accountant. Counsel provided a letter from a bookkeeping service indicating that it provides monthly bookkeeping services and payroll processing, as well as invoices showing that the petitioner engaged those services throughout 2008. Counsel did not provide evidence to demonstrate that the petitioner's CEO, who allegedly has been performing the duties of the proffered position, has a degree in accounting.

Counsel further asserted that another residential care facility operated by the petitioner's licensee applied for an H-1B petition for an accountant, and that the visa petition was approved on February 17, 2004, but that the beneficiary of that other visa petition worked for that other facility for less than one year. Counsel stated, that the management of that care home was discouraged, therefore, from hiring another accountant, and the petitioner's CEO re-assumed the putative accounting duties, then, in early 2007, filed another H-1B petition for an accountant for that company [REDACTED] who, at the time of that writing, had been working in that position for more than a year.

The AAO observes that the assertion that circumstances discouraged the petitioner from hiring an accountant provides no support for the proposition that the proffered position is an accountant position or for the proposition that it requires a minimum of a bachelor's degree or the equivalent in accounting.

Counsel stated that the petitioner's CEO's full-time employment with another firm leaves her little time to perform accountant duties for the petitioner or for her other care home. Counsel stated, yet further, that the petitioner's CEO intends to leave the area, and will then be unable to perform the duties of the proffered position.

Counsel stated that, because of the complexities of [REDACTED] billing, tax laws and other challenges, it is common practice for home health care facilities to utilize the services of an accountant. In support of that assertion, counsel provided printouts of website content of two firms offering accounting services to home health care companies. Counsel did not allege that it is common for such businesses to employ their own in-house accountant. Further, the evidence provided shows that those two firms offer contract accounting services to home health care companies, but not that home health care companies routinely retain them.

The director denied the visa petition on August 6, 2009 finding, as was noted above, that the petitioner failed to demonstrate that it would employ the beneficiary in a specialty occupation position. In that decision the director found that the proffered position is not a position for an accountant, but one for a position described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* in the section entitled Bookkeeping, Accounting and Auditing Clerks.

On appeal, counsel reiterated that the petitioner has retained the services of a bookkeeper and that the beneficiary's duties would not be bookkeeping duties, but the more complex duties of an accountant's position. Counsel also reiterated that, although the beneficiary has never hired an accountant, another corporation with the same owner and in the same industry has, pursuant to [REDACTED]. The AAO notes that, for reasons unknown to the AAO, approval of that petition was revoked on April 21, 2010.

The duties of the proffered position, as described by the petitioner's CEO are so abstract that whether they require a bachelor's degree defies analysis. Whether managing financial information; handling budgeting, cost management, and assets; providing information to the corporate executive and to governmental agencies; handling financial reporting, providing tax and budget help; and managing company needs requires a minimum of a bachelor's degree or the equivalent in a specific specialty simply cannot be determined, absent a more concrete description of duties that clarifies their degree of complexity as specifically applied to the petitioner's business.

The CEO further stated, as to the beneficiary's prospective duties, "[The beneficiary] will be involved in all planning and strategic development of new company products." The record contains no evidence pertinent to any "products" the petitioner, a care home, is contemplating developing, and whether the beneficiary's involvement in planning and development of those potential products would require a minimum of a bachelor's degree or the equivalent in accounting is similarly unclear.

On appeal, counsel erroneously asserted that the director, if she found the description of duties insufficient, was obliged to request a more detailed description. The AAO observes that the regulations at 8 C.F.R. § 103.2(b)(8), which govern the RFE process, does not mandate that a director issue an RFE when a petitioner's initial submissions fail to satisfy the eligibility requirements for the H-1B program. In pertinent part, the regulations at 8 C.F.R. §§ 103.2(b)(8)(ii) and 103.2(b)(8)(ii) state:

(ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

(iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS;

or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

Thus, contrary to counsel's assertion, the director was not obliged to issue an RFE.

In the analysis of whether the proffered position qualifies as a position in a specialty occupation, the AAO notes, initially, that accountant positions do not categorically qualify as specialty occupation positions.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> As will now be discussed, the *Handbook* indicates that accountants do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The "Accountants and Auditors" chapter at the 2010-2011 edition of the *Handbook* indicates that not every accountant position requires least a bachelor's degree level of knowledge in accounting or a related specialty.

The introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." This does not support the view that any accountant job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).<sup>2</sup>

Further, the *Handbook* indicates that, as to those accountant positions that do require a degree, that educational requirement may be satisfied by an otherwise unspecified degree in business. In order to demonstrate that a position qualifies as a specialty occupation position, a petitioner must demonstrate that it requires a precise and specific course of study that relates directly and closely to it. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

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<sup>1</sup> All references are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

<sup>2</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree."

To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Therefore, if the educational requirement of a position may be satisfied by a generalized degree in business administration, that position does not qualify as a specialty occupation position.

Further still, the "Education and training" subsection of the aforementioned section of the *Handbook* includes this statement:

Some graduates of junior colleges or business or correspondence schools, as well as bookkeeping 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.

Thus, the fact that a person may be employed in a position designated as that of an accountant and may apply accounting principles in the course of his or her job is not in itself sufficient to establish that the position qualifies as a specialty occupation. The petitioner is obliged to provide sufficient evidence to establish that the particular position that it proffers here would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in accounting.

As was noted above, the petitioner's CEO stated, in the undated letter submitted with the visa petition, that she currently works full-time as "Human Resources Administrator/Payroll Accountant" for a company unrelated to the petitioner. However, notwithstanding that the RFE requested evidence that the petitioner had previously employed a person with an accounting degree in the proffered position, counsel provided no evidence to corroborate the CEO's statement that she works as an accountant, or to support the proposition that the CEO's current position requires a minimum of a bachelor's degree or the equivalent in accounting, or that the petitioner's CEO has such a degree.

Further, because of the lack of specificity in the description of the duties of the proffered position, the record does not demonstrate that the petitioner, which retains only five employees, has sufficient specialty occupation accountant duties to employ the beneficiary at those duties for the 30 hours per week it claims she will work. Whether the beneficiary would perform non-specialty occupation bookkeeping duties, as the director found, is unclear, as is whether the petitioner would continue to retain the services of a contract bookkeeper, as counsel implied. Whether the petitioner truly intends to employ the beneficiary's services at all is similarly unclear. What is clear is that the petitioner has

failed to demonstrate that its business has sufficient specialty-occupation duties at which to employ an accountant for 30 hours per week.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner's normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the argument submitted on appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. The appeal will be dismissed and the petition denied.

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