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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

[REDACTED]

D2

Date: JUN 01 2011 Office: CALIFORNIA SERVICE CENTER 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,

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 The director's decision will be withdrawn and the case will be remanded for further consideration and action.

The petitioner is an environmental consulting services business with four employees and a stated gross annual income of \$390,000. It seeks to employ the beneficiary 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 there exists a reasonable and credible offer of employment in that there is insufficient work to warrant the hiring of an accountant.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's Notice of Intent to Deny (NOID); (3) the petitioner's response to the NOID; (4) the director's denial letter; (5) the Form I-290B and counsel's brief with supporting documents; (6) the AAO's Request for Additional Evidence (RFE) issued on April 5, 2011; and (7) counsel's response to the AAO's RFE. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner submitted a Form I-129 on August 29, 2008 for the beneficiary to work as a part-time accountant. The petitioner stated that the beneficiary would:

[a]pply principles of accounting and business administration to analyze financial information and prepare general ledger and journal vouchers for accounts payable, accounts receivable. Prepare payrolls, financial statements and records. Compile and analyze information to account for expenditures and document business transactions. Process monthly closing and bank reconciliation. Be responsible for financial data analysis and detailing assets, liabilities, capital and prepare reports to summarize and manage grant programs with regard to current and projected financial position to management.

The petitioner did not state the minimum requirements for the position.

On November 4, 2008, the director issued a Notice of Intent to Deny (NOID) stating that the petitioner did not establish that the job offered is a specialty occupation. The director stated that the duties for the proffered position are actually closer to the duties of a bookkeeping or accounting clerk than an accountant.

In response to the NOID, the petitioner stated that it uses a bookkeeping service for the more routine accounting tasks and that it is hiring the beneficiary to work as a financial advisor. The petitioner did not adequately describe its business need for hiring an accountant. Moreover, some of the duties described, such as preparing detailed month end closing financial statements, come under the U.S. Department of Labor's *Occupational Outlook Handbook's* (*Handbook*)¹

¹ All references are to the Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at [REDACTED] (last accessed May 26, 2011).

job description for bookkeeping, accounting, and auditing clerks. However, the petitioner stated that it:

[i]n part operate[s] off grant programs. We have both private and public clients like developers and municipalities. These grants are generated through an application process and so consequently the position will entail the drafting and preparation of grant packages for clients particularly municipalities to apply for public project grants from State and Federal resources. Examples of such grant projects lead to the construction of facilities or installation of devices for cleaning polluted rivers, beaches, etc. The position entails significant assistance in preparing estimation and calculating the cost involved for the project and managing their grants for environmental needs.

On appeal, counsel argues that the proffered position of accountant is a specialty occupation, but does not adequately address the director's concerns regarding whether sufficient work to support the beneficiary in a specialty occupation is available.

In order to best determine whether the proffered position is a specialty occupation as well as whether the beneficiary is qualified to perform the duties of a specialty occupation, the AAO issued an RFE on April 5, 2011.

The RFE requested that the petitioner provide the following documentation:

1. An organizational chart listing all employees of the petitioner and their job titles, demonstrating the hierarchy of the petitioner's organization and where the proffered position fits in relation to the other workers employed by the petitioner;
2. A much more detailed position description of the duties the beneficiary will perform on a day-to-day basis in the context of the petitioner's specific business with a breakdown of time spent in each duty by percentages on a weekly basis;
3. A more detailed description of the petitioner's business, especially with respect to the off grant programs it operates and the reason an accountant is required for the operation of these programs as well as any supporting documentation demonstrating the specific business need for an accountant.
4. Copies of the degrees of other employees the petitioner currently (or previously) employs in positions similar to the one proffered and, if these employees do not have at least a bachelor's degree in accounting, evidence that the employees possess the equivalent of at least a U.S. bachelor's degree in accounting or a related field;
5. If no one has previously performed the duties of the proffered position, please provide an explanation of why the position is now being created;
6. Evidence of the bookkeeping service the petitioner states it uses as well as a more detailed description of the functions of the bookkeeping service; and
7. Any other documentation the petitioner wishes to provide evidencing that the proffered position is a specialty occupation requiring at least a bachelor's degree in a specific specialty.

8. Evidence that the beneficiary has the qualifications to perform the duties of a specialty occupation requiring at least a bachelor's degree or its equivalent in accounting or a closely related field. The petitioner must establish a nexus between the beneficiary's knowledge and the duties of the proffered position.

In response, the petitioner submitted an organization chart, which indicated that the petitioner also employs an office manager/bookkeeper, as well as a description of the bookkeeper's duties, a business overview, copies of the beneficiary's transcripts, and examples of the petitioner's grant projects.

The petitioner also broke down the proffered duties as follows:

- Preparation and analysis of financial reports (20% of the beneficiary's time);
- Financial and budget forecasting (15% of the time);
- Compliance of financial records (15% of the time);
- Analyze cash flow position (10% of the time);
- Preparation of grant packages (20% of the time);
- Reviewing the bookkeeper's duties (10% of the time);
- Solve any accounting discrepancies (5% of the time); and
- Tax issues (5% of the time).

The petitioner did not provide any information about whether it has employed anyone in this position before or, if so, what the credentials of any prior employee(s) were, nor did the petitioner explain why, if no one was previously employed in this position, the position has now been created.

The AAO notes that the *Handbook's* section on Advocacy, Grantmaking, and Civic Organizations states, "[a]ccountants also contribute to fundraising efforts by figuring the costs of new programs and including those estimates in grant proposals. . . ." *Handbook*, 2010-11 ed., available at [REDACTED] (last accessed May 26, 2011). Based on the evidence submitted, the AAO finds that the petitioner, which already employs a bookkeeper and is in the business of operating off grant programs, has demonstrated that there is a reasonable and credible offer of employment for a part-time accountant. However, the petition will be remanded because the petitioner has not adequately addressed whether the proffered position is a specialty occupation and, if it is, whether the beneficiary is qualified to perform the duties of that specialty occupation.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. 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.” *Handbook*, 2010-11 ed., available at [REDACTED] (last accessed May 26, 2011). 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)).² Further, 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.

Handbook, 2010-11 ed., available at [REDACTED] (last accessed May 26, 2011). In this context, 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 the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner 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 knowledge in accounting.

In addition, it is not apparent from the record of proceeding that the beneficiary possesses at least a bachelor’s or higher degree in accounting or its equivalent. More specifically, there is insufficient evidence in the record to establish that the beneficiary’s master’s degree in business administration was granted with a concentration or specialization in accounting or a closely related field. The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

² For instance, the first definition of “most” in *Webster’s New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is “[g]reatest in number, quantity, size, or degree.” As such, if merely 51% of accountant positions require at least a bachelor’s degree in accounting or a related field, it could be said that “most” accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for “most” positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

The director may request such additional evidence as is deemed necessary in rendering a new decision in this matter.

Therefore, the matter is remanded to the director in order to determine whether the proffered position is a specialty occupation and, if it is, whether the beneficiary is qualified to perform the duties of that specialty occupation.

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 been met in part. Accordingly, the director's decision will be withdrawn and the matter will be remanded for entry of a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to the director for further action consistent with the above and entry of a new decision.