



U.S. Citizenship
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FILE: WAC 03 262 52383 Office: CALIFORNIA SERVICE CENTER Date: FEB 03 2006

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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a law office. It seeks to employ the beneficiary as a full-time accountant and to classify her 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 on the ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

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

Citizenship and Immigration Services (CIS) 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.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner describes itself as a law office, specializing in immigration, Medi-Cal, and estate planning, with a clientele primarily of Japanese, Russian, and Lithuanian descent. The petitioner, a sole proprietorship, states that it was established in 1996 and has five employees. In 2002, according to its federal income tax return, the petitioner had gross receipts of \$254,436. The petitioner seeks to employ the beneficiary as an accountant and lists the duties of the position (in its initial letter) as follows:

- Monthly bookkeeping utilizing double entry accounting and bank reconciliations.
- Monthly payroll handling as well as preparation of quarterly and year-end payroll returns.
- State and federal tax returns.
- Ongoing interactive communication with clients from diverse ethnic and cultural backgrounds. Knowledge of Lithuanian and Russian languages as well as business habits and culture of the above communities is of predominant importance.

According to the petitioner, the proffered position requires a bachelor's degree in finance. The beneficiary is qualified for the position, the petitioner declares, by virtue of her four-year diploma in accountancy from Kaunas University of Technology in Lithuania, granted on June 26, 2002.

In response to the RFE the petitioner listed some additional duties of the proffered position:

- Understand and utilize MS Word, MS Excel, Power Point Access, Quick Books, ADP Payroll Processing software and managerial accounting software.
- Responsible for all accounting functions including accounts payable, accounts receivable, payroll preparation, federal and state tax returns.
- Create and manage spreadsheets.
- Furnish annual audit for outside auditors.
- Prepare annual operating plan, financial planning/analysis, forecasting.
- Prepare revenue and standard cost analysis.
- Legal billing.

In his decision the director found that a majority of the proffered position's duties are those of a bookkeeper, rather than an accountant, as those two occupations are described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. A baccalaureate degree in accounting, the director noted, is not a minimum requirement for entry into a bookkeeping position. The director found that the duties of the proffered position could be performed by an experienced individual with less than a baccalaureate degree in accounting. The director determined that a degree requirement is not common to the industry in parallel positions among similar organizations to the petitioner, that the petitioner normally requires a degree for the position, or that the duties of the position are so specialized and complex that baccalaureate level knowledge is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the duties of the proffered position are primarily those of an accountant, an occupation with specialized and complex duties that requires a baccalaureate degree in accounting. According to the petitioner, the evidence of record shows that it has previously hired accountants with baccalaureate level education for the proffered position, and that it is common for law

firms similar in size to the petitioner to hire accountants with baccalaureate degrees in accounting. In the petitioner's view, the proffered position qualifies as a specialty occupation under each of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case. As described in the *Handbook*, 2004-05 edition, at 68-69:

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Most accounting positions require at least a bachelor's degree in accounting or a related field, as indicated in the *Handbook, id.*, at 70. The *Handbook* goes on to say, however, that some junior accounting positions require less than a baccalaureate degree:

Many graduates of junior colleges and business and 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 positions with more responsibilities by demonstrating their accounting skills on the job.

Id. at 71. Thus, although most accounting positions require a baccalaureate degree in accounting or a related specialty, it is possible to enter related positions in the occupational field with less than a baccalaureate educational background and/or experience as a bookkeeper or accounting clerk.

The *Handbook's* subsection "Sources of Additional Information" (page 74) refers the reader to the Internet site for the American Council for Accountancy and Taxation (ACAT), the professional organization that provides the credentials Accredited Business Accountant®/Accredited Business

Advisors® (ABA).¹ That Internet site reveals that a degree in accounting or a related specialty is not required for ABA accreditation. Eligibility for the eight-hour comprehensive examination for the ABA credential requires three years of “verifiable experience in accounting, taxation, financial services, or other field requiring a practical and theoretical knowledge of the subject matter covered on the ACAT Comprehensive Examination.”² “Up to two” of the required years of work experience “may be satisfied through college credit.”

The *Handbook* describes the occupation of bookkeeping, accounting, and auditing clerks as follows:

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

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks . . . such as accounts payable . . . or accounts receivable 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 completeness and accuracy of data on accounts; and code documents, according to company procedures.

¹ At its Internet site (<http://www.nsaacct.org/acat.asp>), the National Society of Accountants describes ACAT as follows:

The **Accreditation Council for Accountancy and Taxation (ACAT)** is an independent accrediting and monitoring organization affiliated with the National Society of Accountants. ACAT accredits professionals in independent practice who have demonstrated measurable knowledge of the principles, practices, and ethical standards of accounting, taxation, information technology and related financial services.

² The ACAT Internet site (<http://www.acatcredentials.org/index.html>) states that the examination tests “proficiency in financial accounting, reporting, statement preparation, taxation, business consulting services, business law, and ethics.”

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

. . . .

Demand for full-charge bookkeepers is expected to increase, because they are called upon to do much of the work of accountants, as well as perform a wider variety of financial transactions, from payroll to billing. Those with several years of accounting or bookkeeper certification will have the best job prospects [emphasis added].

Handbook, id., at 437-38. According to the *Handbook*, a two-year associate's degree in business or accounting is often required for bookkeeping and accounting clerk positions. *See id.* at 434. A four-year bachelor's degree is not required for entry-level positions, the *Handbook* indicates, though many such degree-holders accept bookkeeping and accounting clerk positions to get into the field or a particular company with the aim of being promoted to professional or managerial positions. *See id.* The *Handbook* also indicates that for tax preparers the most significant source of education is on-the-job training. *See id.* at 649.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty field. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

The record in this case does not establish that the proffered position requires a baccalaureate degree in accounting or a related specialty. While the position may include some duties that involve accounting functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent in the field of accounting or a related specialty field. The proffered position lacks important attributes of a management accounting position, as described in the *Handbook*. For example, the *Handbook* indicates that management accountants are involved in strategic planning or new-product development, usually as part of an executive team, and prepare financial reports for nonmanagement groups like stockholders and creditors. These functions are not reflected in the petitioner's description of the proffered position. Though "financial planning/analysis, forecasting" and "cost analysis" are among the duties listed by the petitioner, no details have been provided about these tasks or how they relate to the business of a solo legal practice. Thus, the scope of the proffered position lacks both the breadth and the depth of a management accounting position.

As previously noted, the petitioner states that it has five employees and its 2002 income tax statement indicates a gross annual income of approximately \$250,000. While the size of the company does not, in and of itself, determine a company's need for an accountant, its income level and scale of operations does have a direct and substantial bearing on the scope of the duties the beneficiary would perform in the proffered position. The responsibilities associated with an annual income in the range of \$250,000 differ greatly from the responsibilities associated with an annual income in the millions, or tens of millions, or from the responsibilities of performing accounting work for multiple clients.

Considering the duties of the proffered position and the nature and scale of the petitioner's business operations, the AAO concludes that the position is a combination bookkeeping, accounting, and auditing clerk, as described in the *Handbook*. Many of the job duties – including monthly bookkeeping and bank reconciliations, handling employee payroll, monitoring accounts payable and receivable, and billing clients – accord with the *Handbook's* description of bookkeeping clerks in small establishments, who “handle all financial transactions and recordkeeping” and whose specific duties include such functions as recording all transactions, producing financial statements, preparing reports for supervisors and management, preparing bank deposits by compiling data from cashiers, verifying and balancing receipts, preparing invoices, and keeping track of overdue accounts. Another job duty – furnishing an annual audit for outside auditors – appears to accord with the duties of an auditing clerk. As discussed in the *Handbook*, a baccalaureate or higher degree is not the normal minimum requirement for entry into bookkeeping, accounting, and auditing clerk positions, though employers often require a two-year associate's degree in business or accounting.³ Since bookkeeping, accounting, and auditing clerks do not require a baccalaureate degree in accounting or a related specialty, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).⁴

With regard to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), an affidavit has been submitted on appeal from a sole practitioner, like the petitioner, who states that his annual income is approximately \$125,000 and that he employs an accountant with a bachelor's degree in business, with a specialty in accounting, who “performs all bookkeeping and accounting-related matters in my office.” The affiant did not provide a detailed list of his accountant's duties. Thus, the AAO is unable to determine that the duties of that position are the same or similar to the duties of the proffered position in this case. Furthermore, one letter does not constitute an industry standard. The AAO determines that the affidavit from the sole practitioner is not persuasive evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in accounting or a related specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

³ According to the website for Skyline College, a community college located in San Mateo, California, (www.skylinecollege.net), an associate's degree in business or accounting would involve learning the fundamentals about financial accounting principles and concepts, balance sheets, income statements, cash flow statements, the GAAP, forecasting, budgeting, cost accounting, and break even analysis, as well as developing and operating a computerized accounting system using tools such as QuickBooks, QuickBooks Pro, or Peachtree, an integrated commercial accounting software package that is used to review, differentiate, and interpret accounting concepts and data in a multitude of business situations.

⁴ Another duty of the proffered position is the preparation of tax returns, which can be performed by a tax preparer. As indicated in the *Handbook, id.*, at 649, the most significant source of education for a tax preparer is on-the-job training, not a baccalaureate or higher degree in a specialty. Thus, a tax preparer is not a specialty occupation.

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has submitted an affidavit on appeal asserting that it has hired full-time accountants since 1997, and that a bachelor's degree in accounting has always been required for the position. The petitioner also states that it employs a bookkeeper without a bachelor's degree in accounting. Earlier, in response to the RFE, the petitioner submitted another affidavit asserting that it employed [REDACTED] as an accountant from October 2001 to January 2003 and [REDACTED] in the same capacity since March 15, 2004, both of whom have bachelor's degrees in accounting. In addition, affidavits were submitted from [REDACTED] each of whom stated that she worked for the petitioner in the time frames indicated and that she has a bachelor's degree in accounting. No corroborating documentation has been submitted to confirm any of the foregoing information. Neither [REDACTED] described the duties of their positions or furnished a photocopy of her accounting degree. Nor has the petitioner submitted any documentary evidence – such as pay stubs or employee records – demonstrating that it employed either of those individuals. The petitioner's 2002 tax return does not record that wages were paid to any employees. An amount of \$63,139 was listed for "outside services," but the tax return does not indicate the nature of those services. The record includes a payroll tax record from April 15, 2003 to January 17, 2004, a time period not covered by either affidavit. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See 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)). The AAO concludes that the affidavits in the record fail to establish that the petitioner normally requires a bachelor's degree in accounting or a related specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. In accord with the director's decision, AAO determines that the duties of the position do not exceed the occupational scope of a bookkeeping, accounting, or auditing clerk and could be performed by an individual with less than baccalaureate level knowledge in accounting or a related specialty.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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