D2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-02-103-52910 Office: California Service Center Date: FEB 1 0 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a distributor of security systems and audio and video equipment. It has 42 employees and a gross annual income of $14 million. It seeks to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner appeared to relate to the job of a bookkeeper or accounting clerk. The director did not find the duties described by the petitioner to be indicative of a position that only encompasses accounting tasks. On appeal, counsel states, in part, that the proposed duties are primarily those of an accountant rather than a bookkeeper. Counsel further states that the Department of Labor (DOL) has determined that a position such as the proffered one qualifies as a specialty occupation.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> As an Accountant, [the beneficiary] will record and analyze the financial information and prepare the company's financial statements...Approximately 15-20 hour/week of her work will primarily include recording and analyzing the company's financial information

(general ledger posting, maintenance and reconciliation of accounts) and preparing the company's financial statements (i.e. balance sheet, profit and loss statements, etc.) with summaries of our assets (i.e. cash, inventories, customer receivables) as well as liabilities in compliance with generally accepted accounting principles. Approximately 10 hours/week, [the beneficiary] will prepare reports on rental, collection, annual budget, cost and asset management and establish internal control procedures. The remaining 10-15 hours/week will be spent in establishing, modifying, documenting and coordinating implementation of accounting and accounting control procedures. She shall develop and implement manual and/or computerized accounting and inventory management system to aid the company's daily operation.

Pursuant to 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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the beneficiary is a "corporate accountant," an occupation that would normally require a bachelor's degree in accounting or a related field. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's Dictionary of Occupational Titles (DOT)(4th Ed., Rev. 1991). However, the Associate Commissioner does not consider the DOT a persuasive source of information regarding whether a particular job 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.

The DOL has replaced the DOT with the Occupational Information Network (O*Net). Both the DOT and O*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's Occupational Outlook Handbook (Handbook) provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Service is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT.

In its Handbook, 2002-2003 edition, at page 21, the DOL describes the job of a management accountant as follows:

> *Management accountants* - also called industrial, corporate or private accountants - record and analyze the financial information for the companies for which they work. . . . Usually, management accountants are part of executive teams involved in strategic planning or new-product development. . . . They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities.

The record reflects that the petitioner, which distributes security systems and audio and video equipment, employs 42 persons and has a gross annual income of $14 million. The business in which the beneficiary is to be employed does not require the services of a corporate accountant who is part of an executive decision-making team. Furthermore, there is no evidence that the position offered includes complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires an individual with a knowledge of sophisticated accounting techniques normally associated with the duties of a corporate accountant.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the financial transaction reporting duties, which are similar to the duties that a bookkeeping, accounting, or auditing clerk would execute in a small business establishment. In contrast to the description of an accountant, the DOL describes the positions of a bookkeeping, accounting and auditing clerk at page 390 of its Handbook as follows:

> In small establishments, *bookkeeping clerks* handle all aspects of financial transactions. They record all

> transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . 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 . . . Senior clerks also review computer printouts against manually prepared journals and make necessary corrections.

The record indicates that the duties of the proffered position fall primarily within the scope of a bookkeeping, accounting or auditing clerk position rather than a management accounting position. For example, the petitioner states that the beneficiary will be involved in "general ledger posting, maintenance and reconciliation of accounts" and "preparing the company's financial statements (i.e. balance sheet, profit and loss statements, etc.)..." Bookkeeping and routine accounts receivable and payable transactions are not duties normally associated with a corporate accountant. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as accounting, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a bookkeeper or accounting clerk, rather than an accountant. According to the DOL, the usual requirement for a bookkeeping, accounting or auditing clerk is a high school diploma or its equivalent. A higher level of training is favored but not required, and such training is available in community colleges or schools of business. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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

ORDER: The appeal is dismissed.