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U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-227-53590 Office: Vermont Service Center

Date: JAN 24 2003

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)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a start-up business registered in New Jersey as investors, wholesalers, and dealers. The company will initially operate with three employees and projects a gross annual income of \$500,000. It seeks to employ the beneficiary as an accountant for a period of two years and ten months. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief.

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.

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 determined that the size of the petitioner's business and the scope of its business activities would not normally warrant the services of a full-time accountant. The director further determined that the petitioner had not shown that a bachelor's degree in commerce is normally the minimum requirement for entry into the occupation.

On appeal, the petitioner asserts that the petitioning entity, although a new company, is in the process of taking over a running business with sizeable annual income and requires the services of

a full-time accountant to handle the financial and accounting matters associated with the takeover of another business. The petitioner further asserts that the duties of the position are complex and require the theoretical and practical application of a body of highly specialized knowledge in the specialty that is normally associated with the attainment of a bachelor's or higher degree in a specific specialty.

The petitioner's assertions on appeal are 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 a separate letter which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] as Accountant, will be in over-all charge of the operations of the Group. The responsibilities inter alia include General Administration, Budget control, Finance, personnel and other related activities, in short to ensure over-all profitable operations of the company.

[The beneficiary] will direct financial activities, will prepare Management, Accounting and Systems reports for the company and recommend to the management economic objectives and policies, particularly related to the financial position, in the area of income, expenses, earnings, investment of surplus funds and other related matters. The alien will also provide requisite information to management for making sound business decisions.

[The beneficiary] will control the activities of the accounting department. [The beneficiary] will devise accounting systems and implement internal audit. As Accountant, the alien will arrange for the maintenance of proper records of the company. [The beneficiary] will also recommend measures to control the operations in a manner of avoiding waste, fraud, etc.

[The beneficiary] will arrange for the audit of the books of the company and will advise management as to desirable operational adjustments from the point of view of taxation.

In addition, [the beneficiary] will be responsible for General Administration, Contracts, Purchases, and Personnel. [The beneficiary] will deal with day-to-day administration of the company's operations. [The

beneficiary], with the expertise in computer field, will establish systems and proper procedures to ensure efficient operations of the company. [The beneficiary] will approve regular suppliers, negotiate terms, finalize and enter into contracts with them and oversee its implementation.

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.

The petitioner asserts that the proffered position parallels that of controller and treasurer, both occupations with an SVP rating of 8 in the Department of Labor'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 Department of Labor 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 Department of Labor'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 Department of Labor has assigned it a specific SVP rating in the DOT.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the DOL's Occupational Outlook Handbook, (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation may be a specialty occupation. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

As discussed previously, the nature of the petitioning entity's business operations, including the size and scope of its business activities, is among the factors considered by the Service in determining whether the proffered position is a specialty occupation. Although the petitioner's description of the duties of this position appear to paraphrase some of the duties of an accountant as that job is described by the DOL in the Handbook, 2002-2003 edition, the Service is not persuaded to classify the position as that of management accountant. 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. 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 non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in areas including financial analysis, planning and budgeting, and cost accounting.

The record reflects that the petitioner, which is a wholesaler/dealer, has three initial employees and a projected gross annual income of \$500,000. The business in which the beneficiary is to be employed does not require the services of a management 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 management accountant.

The duties of the position in question are clearly broader in scope than those normally performed by an accountant since the position involves oversight of the overall operations of the company, including general administration, contracts, purchases, and personnel. Indeed, it appears that the beneficiary would primarily be overseeing the activities of the accounting department rather than performing accounting duties himself. The duties of the position as described by the petitioner are more representative of the responsibilities of a general or operations manager than they are the duties of a corporate accountant. The DOL describes the duties of general or operations managers at page 87 of the Handbook as follows:

General and operations managers plan, direct, or coordinate the operation of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. . .

Additionally, the DOL states at page 86 of the Handbook:

In smaller organizations, such as independent retail stores or small manufacturers, a partner, owner, or general manager often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties.

A review of the Handbook finds no requirement of a baccalaureate degree in a specific specialty for employment as a general or operations manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background. It is noted that the petitioner claims that the company is in the process of taking over a running business with a sizeable gross annual income and requires the services of a full-time accountant to oversee the process. The record does not, however, contain any evidence to corroborate this claim. In view of the foregoing, it is concluded that the petitioner has not submitted sufficient evidence to show that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it required a baccalaureate degree in a specific specialty as part of the hiring process for

the position in question. The petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in a specific specialty in parallel positions.

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 in a specific specialty.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the minimum requirement for employment as a general manager or operations manager. Consequently, 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.