

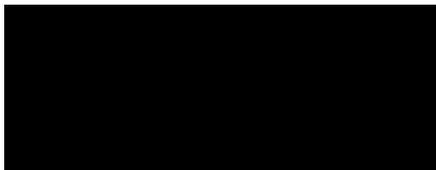
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U.S. Department of Homeland Security
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U.S. Citizenship
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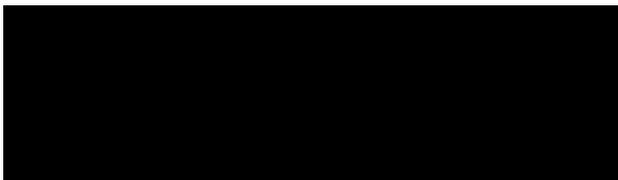
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FILE: WAC 02 281 52773 Office: CALIFORNIA SERVICE CENTER Date: **AUG 23 2005**

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)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
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 sustained.

The petitioner provides business consulting and administrative services, specializing in employee stock ownership plans and trust administration. It seeks to extend its authorization to employ the beneficiary as a trust accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the proffered position is not a specialty occupation. On appeal, counsel 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.

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.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a trust accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 27, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing required forms for the Internal Revenue Service in connection with the administration of trusts; maintaining ledgers, code accounts, and reconciling and verifying figures; performing audits and preparing reports; inspecting the petitioner's accounting systems and preparing reports of findings and recommendations for management; and providing tax planning advice. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping or accounting clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an accountant, and is not a bookkeeper or accounting clerk position. Counsel states further that the proposed duties, which include preparing accurate and timely trust reconciliations, preparing distributions and tax calculations, and supervising the work of an assistant accountant, are so complex as to require a related baccalaureate degree.

The proffered position is that of a trust accountant for the petitioning entity, which provides business consulting and administrative services and specializes in employee stock ownership plans and trust administration. Established in 1973, it has 23 employees and a gross annual income of \$2,900,000. A review of the *Handbook*, 2004-2005 edition, at page 70, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. In this case, the beneficiary holds a Bachelor of Science in Accountancy degree conferred by a Filipino institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the equivalent of a Bachelor of Arts degree in accounting from an accredited U.S. institution of higher learning. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.