

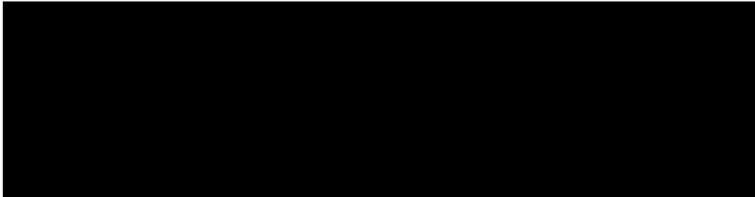
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

81

PUBLIC COPY



FILE: WAC 04 241 53297 Office: CALIFORNIA SERVICE CENTER Date: AUG 11 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:



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, Chief
Administrative Appeals Office

DISCUSSION: The 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 petition will be approved.

The petitioner is a certified public accounting (CPA) firm that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary 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 basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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 proposed position.

The petitioner's August 25, 2004 letter of support described the proposed position as follows:

As an Accountant, [the beneficiary] will be assigned to provide professional accounting, tax[,] and financial services to our individual, partnership[,] and corporate clients. This would involve constant communication to the management and the employees of our clients which are of Philippine origin. This involves preparation, analysis[,] and verification of financial statements to provide information to clients; tax planning and assistance; recommend[ing] improvements of client's [sic] accounting systems and internal controls[;] payroll services[;] preparation of business plans[;] management of accounts receivable and accounts payable[;] and other general accounting services.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a bookkeeper or accounting and auditing clerk.

On appeal, counsel offers additional information regarding its company and the proposed position. The record contains an organizational chart to demonstrate that in addition to its accounting staff it employs a tax preparer/bookkeeper, an administrative officer/bookkeeper, and a part-time clerk. Such employees would be responsible for simple record-keeping tasks, thereby overcoming the director's concern that the beneficiary would be performing simple data processing functions. While some of the duties of the proposed position may reflect those of bookkeeping, accounting, and auditing clerks, the majority are those normally performed by degreed accountants, and the AAO agrees with counsel that the proposed position is that of an accountant.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

According to the 2006-2007 edition of the *Handbook*, public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their clients, which may be corporations, governments, nonprofit organizations, or individuals.

The totality of the evidence in this proceeding, including detailed information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational structure, establishes that the proposed position is that of a management accountant as described in the *Handbook*. According to the *Handbook*, such a position requires a bachelor's degree in accounting or a related specialty. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

According to an evaluation contained in the record, the beneficiary possesses the equivalent of a bachelor's degree in business administration, with a concentration in accounting. She is therefore qualified to perform the duties of this specialty occupation

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the director's order will be withdrawn and the petition approved.

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.

ORDER: The appeal is sustained. The petition is approved.