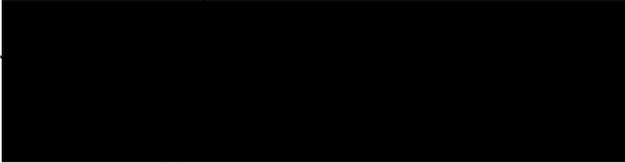


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prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
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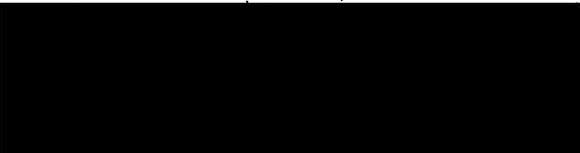
FILE: WAC 04 038 50295 Office: CALIFORNIA SERVICE CENTER Date: FEB 09 2007

FEB 09 2007

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:



**PUBLIC COPY**

INSTRUCTIONS:

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On November 24, 2003, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as an accountant 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). The California Service Center director denied the petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on March 1, 2006. Subsequently, the petitioner filed a complaint in the U.S. District Court for the Central District of California seeking declaratory and injunctive relief requiring U.S. Citizenship and Immigration Services (USCIS) to grant the H-1B petition. *Lunex Corporation and Connie Guerrero v. Christina Poulos, et al.*, CV06-3281 (May 26, 2006). The AAO, on its own motion, reopened the proceeding to reconsider its decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and issued two requests for evidence. The petitioner responded to both, with the second response received by the AAO on February 8, 2007. Upon reconsideration of the entire record of proceeding, including the documents that the petitioner has submitted in response to the AAO's requests for evidence, the AAO's prior decision will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner is a wholesale distributor of cellular phones and calling cards. The director denied the petition based on his finding that the position was not a specialty occupation.

As presently constituted the record of proceeding before the AAO contains: (1) Form I-129 (Petition for Nonimmigrant Worker) and supporting documentation; (2) the director's request for additional evidence; (3) prior counsel's response to the director's request; (4) the director's denial letter; (5) Form I-290B, with current counsel's brief, and additional documentation; (5) the AAO's first request for evidence, dated August 21, 2006; (6) counsel's response to the first request for evidence, received by the AAO on November 9, 2006; (7) the AAO's second request for evidence, dated November 21, 2006; and (8) counsel's response to the AAO's second request for evidence, received by the AAO on February 8, 2007.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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

An occupation which [1] 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 [2] 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.

Consonant with the earlier cited definitions of "specialty occupation" at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards; but whether performance of 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 the minimum for entry into the occupation, as required by the Act.

The AAO's decision and subsequent requests for evidence focused upon the record's lack of substantive information about the accounting work that the beneficiary would perform in the context of the petitioner's business operations; apparent discrepancies in the record; and a lack of supportive documentary evidence, including the absence of certified corporate income tax returns.

The petitioner's responses to the requests for evidence, including corporate tax return transcripts from the Internal Revenue Service, remedy the evidentiary defects noted by the AAO and overcome the basis of the director's decision to deny the petition. As presently constituted, the record substantiates the proffered accountant position as one that normally requires at least a bachelor's degree in accounting or a related specialty. The petitioner has satisfied the specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record contains a copies of the beneficiary's diploma and transcript evidencing a bachelor's degree in Accounting from the Polytechnic University of the Philippines, and a determination, by a credentials evaluation service that specializes in evaluating foreign educational credentials, that the beneficiary's degree is equivalent to a U.S. bachelor of science degree in Accounting. Therefore the beneficiary satisfies the beneficiary qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The petitioner has established that the position is a specialty occupation and that the beneficiary is qualified to perform the services of the specialty occupation. Accordingly, the decision of the director and the previous decision of the AAO will be withdrawn and the petition will be 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. Accordingly, the appeal will be sustained.

**ORDER:** The AAO's decision of March 1, 2006 is withdrawn. The appeal is sustained. The petition is approved.