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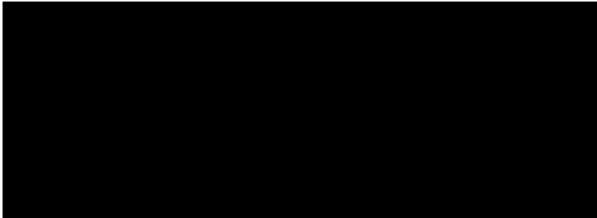


FILE: WAC 02 067 52935 Office: CALIFORNIA SERVICE CENTER Date: OCT 02 2007

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:



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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a residential care facility for the elderly 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 ground that the beneficiary is not qualified to perform the proffered position. Counsel submits a timely appeal.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) the 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) the Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. The petitioner asserts that the proposed position requires a bachelor's degree in accounting and related experience.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in accounting or a field that is directly related to the proposed position.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

The evidence in the record establishes the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The March 1, 2002 educational evaluation from the Foundation for International Services (FIS), Inc. indicates that the beneficiary's bachelor's degree in commerce from Far Eastern University in Manila, Philippines, is the equivalent of a bachelor's degree in business administration from an accredited college or university in the United States. Although a bachelor's degree in business administration is normally not sufficient to establish that a beneficiary is qualified for a specialty occupation,<sup>1</sup> the AAO observes that the beneficiary's transcript reveals that he took coursework in elementary accounting, partnership and corporation, basic finance, financial accounting, business finance, income taxation, transfer and business taxes, economic analysis-microeconomics, introduction to macroeconomics, tax and agrarian reform, principles of economics, financial management, wage and salary administration, investment operations, and negotiable instruments. The transcript reveals that the beneficiary completed a sufficient concentration of accounting and business courses to qualify him for the offered position.

As related in the discussion above, the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position.

The petition may not be approved however, as the AAO finds the petitioner has not complied with the filing requirements for H-1B petitions. Regulation requires that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified labor condition application (LCA) from the Department of Labor (DOL) in the occupational specialty in which the H-1B worker will be employed. See 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a labor certification application with the Department of Labor when submitting the Form I-129.

In the present case, the H-1B petition was filed with CIS on December 18, 2001, without a certified LCA. On December 19, 2001, the director noted this deficiency and issued a request for evidence seeking a copy of the petitioner's certified LCA. The petitioner responded on March 9, 2002, submitting an LCA certified by the DOL on December 26, 2001. Because the LCA submitted by the petitioner was certified after the date of

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<sup>1</sup> A degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968).

filing of the H-1B petition, the record does not establish that the petitioner has complied with the requirements for the filing of the Form I-129. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of the timely filing of the LCA, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's March 22, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.