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U.S. Citizenship
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FILE: WAC 04 052 50602 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Michael T. Kelly
for Robert P. Wiemann, Director
Administrative Appeals Office

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 The director's decision will be withdrawn.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

The petitioner is a distributor of restaurant supplies and equipment. It seeks to employ the beneficiary as a budget analyst and to classify her 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 record did not establish that the beneficiary was qualified to perform the services of a specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform the services of 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: (1) Form I-129 and supporting documentation; (2) the director's request for additional (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The record indicates that the beneficiary graduated from the Philippine School of Business Administration on November 26, 1985 with a bachelor of science in business administration, majoring in

management. The record includes a letter from an education evaluation service in Los Alamitos, California, which reviewed the beneficiary's degree and academic transcript in the file and concluded that the degree she earned in the Philippines is equivalent to a bachelor of science with a dual major in business administration and management from a regionally accredited college or university in the United States.

In his decision the director found that the beneficiary's degree in business administration was a general degree which did not qualify her to perform the services of a specialty occupation. Various cases and precedent decisions were cited for the proposition that a degree in business administration did not qualify an alien beneficiary to perform the services of a specialty occupation unless the degree included a particular area of specialization directly related to the proffered position, as evidenced by specific academic coursework and knowledge gained that are realistic prerequisites of a particular occupation within the broad field of business. In the director's judgement the beneficiary's degree in business administration did not satisfy the requirement of a particular specialization directly related to the proffered position of budget analyst. The director concluded that the beneficiary was not qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), or any of the other regulatory criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal counsel asserts that the evidence of record – in particular the beneficiary's academic transcript and the letter from the education evaluation service – establishes her qualifications to perform the services of a budget analyst. The transcript states that the beneficiary graduated from the Philippine School of Business Administration "with the degree of bachelor of science in business administration (BSBA), *major in management*" (emphasis added), thus indicating that the BSBA is more than a general degree. The beneficiary's coursework included classes in economics (four), accounting (five), and management (eight), which counsel maintains directly relate to the proposed duties of the budget analyst position. The education evaluation in the file recognizes the import of that coursework, counsel contends, by concluding that the beneficiary's degree is equivalent to a U.S. baccalaureate degree with a dual major in business administration and management. In counsel's judgement, therefore, the record establishes that the beneficiary's degree is more than a general bachelor of business administration degree, and that the academic courses she took in management, accounting, and economics, and the knowledge she gained thereby, were realistic prerequisites and directly related to the proffered position of budget analyst. Counsel asserts that the beneficiary is qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The AAO agrees with counsel that the foregoing evidence establishes the beneficiary's qualifications to perform the services of the proffered position of budget analyst. Accordingly, the grounds for the denial of the petition have been overcome and the director's decision must be withdrawn.

The petition cannot be approved, however, unless the petitioner can establish that the budget analyst position qualifies as a specialty occupation. The director did not address this issue in his decision. As provided in 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 petition will be remanded for a determination as to whether the proffered position qualifies as a specialty occupation. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation, and any other evidence the director may deem necessary. The director shall then issue a new decision based on the evidence of record relating to the requirements of a specialty occupation. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision of February 6, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision. If the decision is adverse to the petitioner, it shall be certified to the AAO for review.