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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



AUG 05 2003

File: WAC-01-063-54133

Office: CALIFORNIA SERVICE CENTER

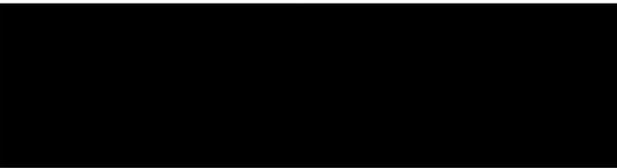
Date:

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:



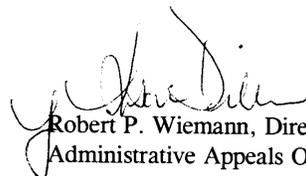
**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a security guard business with 224 employees and a gross annual income of \$4,632,882.33. It seeks to employ the beneficiary as an accountant for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the petitioner had not demonstrated that the beneficiary's degree in business management qualifies her to perform the duties of an accountant. On appeal, counsel states, in part, that a copy of the beneficiary's master's degree transcript shows that her advanced degree has a concentration in accounting courses.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

In its *Occupational Outlook Handbook*, 2002-2003 edition, at page 22, the Department of Labor finds that most accountant and internal auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer applicants with a master's degree in accounting or with a master's degree in business administration with a concentration in accounting. The beneficiary holds a Bachelor of Science degree in industrial engineering and a master's degree in management conferred by Filipino institutions. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor's degree in industrial engineering and a master's degree in business management from an accredited college or university in the United States.

The beneficiary's graduate courses include the following: Management Accounting & Control I; Philippine Business Environment; Economic Analysis; Human Behavior in Organizations; Quantitative Methods in Business; Management Accounting & Control II; Marketing Management; Organization & Management; Statistical Methods in Administration; Financial Management; Production Management; and Business Policy. Counsel's assertion that the evidence clearly shows that the beneficiary's advanced degree has a concentration in accounting is noted. The credentials evaluator, however, does not corroborate counsel's assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N

Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In view of the foregoing, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

In a letter dated December 11, 2000, the petitioner's president states, in part, that the beneficiary has "extensive business experience" in addition to her educational background. The record, however, contains no evidence that the beneficiary's educational and employment backgrounds qualify her for the proffered position, such as an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized field of study. The record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.