

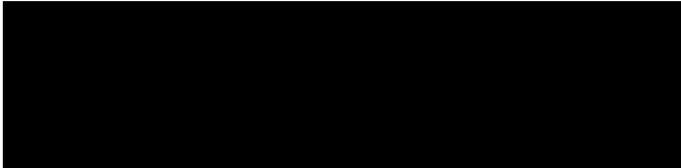
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



FILE: EAC 00 229 51458 Office: VERMONT SERVICE CENTER

Date: **DEC 03 2003**

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:



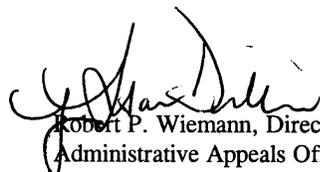
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, 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 wholesaler of women's clothing. It employs eight people and has a gross annual income of more than \$7,470,000. It seeks to temporarily employ the beneficiary as an accountant for a period of two years. The director determined that the petitioner had not established that its business is large enough to require a full-time accountant.

On appeal, counsel asserts that the director erred in his determination and that the petitioner provided ample documentation to justify its need for a full-time accountant. In addition, counsel states that the director abused his discretion in making the determination to deny the petition.

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:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

The director did not address the issue of whether the proffered position is a specialty occupation.

Similarly, the director did not determine whether the beneficiary is qualified for employment in a specialty occupation. 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.

The sole issue in the instant proceeding is whether the petitioner has established that the size of its business and its available resources are significant enough to support a full-time accountant. In the request for additional evidence, the director stated:

The record indicates that your company has only eight permanent employees and a net annual income of \$46,850, yet you wish to employ the beneficiary as a full-time accountant. Please submit evidence that your company has sufficient work and resources available to satisfy this service that the beneficiary will be performing services in a specialty occupation for the requested period of employment.

In reply, counsel submitted the petitioner's 1999 corporate tax return, the projected income statement for the first quarter of 2001, the actual sales figures from the first quarter of 2000 (from which the projections for 2001 were made), and copies of the actual orders for the first quarter of 2001. These documents indicate a significant increase in business each year. The only relevant evidence, however, is the actual sales figures from the first quarter of 2000 and the 1999 corporate tax return. 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 petitioner must establish its eligibility at the time of filing.

On appeal, counsel asserts that the petitioner is an established and successful business, with gross receipts of more than \$7,000,000 in 1999. The director made his determination based on the absence of specific line item fees for accounting services on the petitioner's 1999 tax return. Counsel states, however, that the business is growing rapidly, and it now needs to have an accountant on staff, even though there was not a need for full-time services previously. According to counsel, the president and others on the administrative staff handled many of the accounting functions in the past. While the petitioner cannot establish eligibility based on projected events, nor on events that occurred after filing the petition, it appears that at the time of filing, the business was clearly viable with significant financial events; there is nothing in its documentation to indicate that it would not be able to support a full-time accountant. The director's comments on this issue are withdrawn.

Nevertheless, the petition may not be approved at the present time. As the director did not discuss the whether the proffered position is a specialty occupation or the beneficiary's qualifications to perform a specialty occupation, the matter will be remanded to the director for further consideration. The director must afford the petitioner reasonable time to provide evidence pertinent to the issues of whether the position is a specialty occupation and the beneficiary's qualifications, 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 April 4, 2001 decision is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.