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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 059 52894 Office: VERMONT SERVICE CENTER

Date: FEB 24 2004

IN RE: Petitioner:  
Beneficiary:



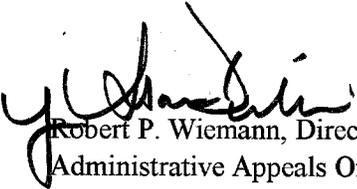
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a wholesale trading company that seeks to employ the beneficiary as an accountant. The petitioner 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, because he found that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a statement.

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.

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.

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 record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. On the Form I-290B counsel indicated that a brief would be submitted within thirty days; however, as of this date, the AAO has not received any additional material. Thus, the record is complete. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties in the record includes: the I-129 petition; the petitioner's November 28, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: recording information and preparing reports regarding financial activity, conducting analyses in order to project future revenues and expenses and prepare budgets, preparing all types of financial statements and tax returns, appraising and inventorying property and equipment, and supervising the bookkeeper. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the petitioner had not shown that its business, which the director mistakenly stated was involved in the importation of semi-precious stone products, needed the services of a full-time accountant. Citing to the section on education and training requirements for accountants in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director stated that the *Handbook* implies that not all accountant positions require a bachelor's degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director failed to consider all the evidence on the record and erred in finding that the position of accountant does not require a bachelor's degree. Counsel further states that the director incorrectly determined that the petitioner did not require the services of a full-time accountant. Upon review of the record, the petitioner has established two of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is shown to be a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that "Most accountant and internal auditor positions require at least a bachelor's degree in accounting or a related field." The *Handbook's* discussion of the educational requirements for accountants indicates that one would rarely encounter an accounting position that did not require a bachelor's degree. In fact, the *Handbook* provides a solid basis on which the AAO may conclude that accountants, in general, are required to possess a bachelor's degree in accounting or a related field in order to enter into that position.

The record also supports the criterion 8 C.F.R. § 214.2(h)(iii)(A)(4), that 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 duties listed go beyond those of a bookkeeper or accounting clerk, including a broad range of responsibility for financial analysis and projection, budget preparation, and assistance with business planning. The multi-national aspect of the petitioner's transactions complicates the accounting process. The record also indicates that the incumbent in this position would supervise a bookkeeper.

To the extent that they are depicted in the record, the duties appear to be so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in accounting. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.