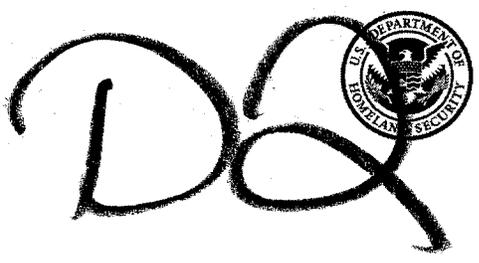


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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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FEB 26 2004

FILE: WAC 02 097 51941 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

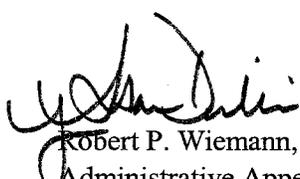
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 director of the service center 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 garment importer and distributor of garments and apparel from China and Hong Kong. It distributes these goods to department stores and other retailers in the United States, Europe, and Central America. 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 petitioner had failed to establish that the proffered position is a specialty occupation. In particular, the director determined that the petitioner had established only that the proffered position was a bookkeeper position, not an accountant as asserted by the petitioner, and, therefore, did not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response, with documentation, to the director's request; (4) the director's denial letter; and (5) the matters submitted on appeal, including counsel's brief and its enclosed letters from the petitioner's president and the Certified Public Accountant (CPA), both of whom had submitted letters earlier in this proceeding.

Upon review of the entire record, the AAO has determined that the petitioner has established that the duties of the position comport with those of accountant, which is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO reviewed descriptions of the occupational duties of bookkeepers, other financial clerks, and accountants in the 2002-2003 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The *Handbook* indicates that a bookkeeper may handle all financial records and transactions in a small business, and that the DOL expects that there will be a growing demand for full-charge bookkeepers as they are called upon to do much of the work of accountants. Likewise, the director's decision indicated that he was sensitive to the facts that there may sometimes be a fine line between a bookkeeper position and that of an accountant, and that the burden of proof lies with the petitioner.

However, the letters submitted by the CPA and the petitioner's president on appeal and in response to the director's Request For Evidence are persuasive that the proffered duties exceed the scope of a bookkeeper and comport with those of an accountant as described in the *Handbook*. These letters establish that the specific duties outlined for this particular position include a substantial amount of accountant tasks - such as cash flow and budgetary projections, Profit and Loss Statements and review, and development of a computerized accounting system tailored to the petitioner's needs - that are sufficient to qualify the position as an accountant specialty occupation, by application of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (4).

On appeal, no weight was accorded to the earlier AAO decision cited by counsel: while 8 C.F.R. § 103.3(c) provides that Citizenship and Immigration Services (CIS) precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

The final issue that will be addressed is whether the evidence of record establishes that the beneficiary is qualified to perform the proffered accountant specialty-occupation position.

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 evidence of record establishes that the beneficiary is qualified to perform the proffered accountant specialty-occupation position. The Credential Evaluation by International Credential Evaluators, Inc. establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in accounting, which is a degree in a specific specialty that is required by the relevant specialty occupation. Therefore, the beneficiary qualifies for the proffered position by application of 8 C.F.R. § 214.2(h)(4)(iii)(C) (4), that is, education that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) (3) specifically provides for satisfaction of the U.S. degree-equivalency criterion by "[a]n evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

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.

ORDER: The appeal is sustained. The petition is approved.