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**U.S. Citizenship
and Immigration
Services**

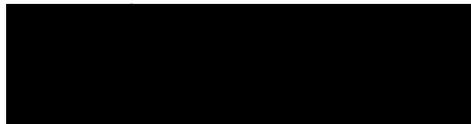


FILE: WAC 02 032 53144 Office: CALIFORNIA SERVICE CENTER Date: **MAR 10 2004**

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

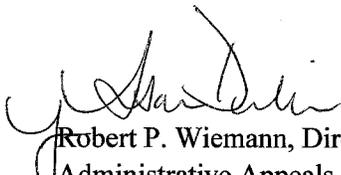
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All 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 involved in the design, manufacture, and sale of computer networking products and 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issues to be discussed in this proceeding are whether the position offered to the beneficiary qualifies as a specialty occupation, and whether the beneficiary qualifies to perform the duties of a specialty occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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.

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 proceedings 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) the Form I-290B with counsel's brief. 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 includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: perform basic record keeping; manage accounts receivable/payable, and payroll; manage fixed assets; reconcile bank accounts; participate in cash flow management, budgeting, and financial planning; maintain and value inventory; prepare financial statements and ratio analysis; administer insurance/profit sharing with outside contractors; prepare/assist in the preparation of tax returns; establish and apply controls to insure legal/fiscal compliance with applicable law; generate reports with ratio analysis, capital budgeting analysis, and cost-volume-profit analysis for senior management; project cash flow considering capital expenditures, depreciation and related tax implications; and make short term financial decisions for the company in the absence of the President. The petitioner stated that the beneficiary would report directly to the President of the company, and that the minimum education required for the offered position is a bachelor's degree in accounting, with a CPA/MBA preferred.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for accountants. In the *Occupational Outlook Handbook*, 2002-03 edition (*Handbook*), it is noted that management accountants record and analyze the financial information of companies. Their responsibilities include: budgeting, performance evaluation, cost management, and asset management. Many of the duties to be performed by the beneficiary are normally performed by bookkeepers and financial clerks, such as the basic record keeping functions noted by the petitioner. Other duties, however, are normally performed by accountants and require the theoretical and practical application of a body of highly specialized knowledge. For example, the beneficiary will: make decisions involving the capitalization and depreciation of fixed assets; make financial decisions for the company in the absence of the President; participate in budgeting and financial planning decisions with the company President; value inventory; and make complex ratio analysis to be used in decision making. The complexity of the duties, and level of responsibility to be held by the beneficiary, makes apparent that the offered position is that of an accountant. The *Handbook* notes that most accountant positions require at

least a bachelor's degree in accounting or a related field. The proffered position is, therefore, a specialty occupation as it meets the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not address that issue as he denied the petition on other grounds. The record is, however, sufficient for the AAO to make that determination.

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.

World Evaluation Services, Inc. issued an evaluation of the beneficiary's foreign education. It was determined that the beneficiary's foreign education was equivalent to a bachelor's degree in business administration and accounting from a regionally accredited educational institution in the United States. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.