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FILE: EAC 01 223 53314 Office: VERMONT SERVICE CENTER Date: MAY 03 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and 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 The director's decision will be withdrawn, and the matter remanded for entry of a new decision.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 an importer and distributor of ethnic foods. In order 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 did not meet the definition 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 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 fields 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.

On the Form I-129, the petitioner described the proffered position as "Accountant." Submissions with the Form I-129 included a letter of support from the petitioner's general manager that described the duties of the proffered position as follows:

1. Apply principles of accounting to analyze financial information and prepare financial reports including compiling and analyzing financial information to prepare entries to accounts such as general ledger accounts, documentation business translations. Analyze financial information detailing assets, liabilities, and capital, and prepare balance sheet, profit and loss statements, and other reports to summarize current and projected company financial position using computerized system. Formulate Federal, State, City, General Corporation, tax returns on behalf of our company utilizing specialized knowledge in accounting and tax preparation. In order to perform this job duty the Beneficiary must apply his specialized knowledge in the fields of Accounting, Economics, Finance and

Financial Management, Managerial Accounting, Tax Accounting, Corporation Accounting. (15 hours)

2. Apply principles of accounting to analyze financial information and prepare financial reports including compiling and analyzing financial information to prepare entries to accounts such as general ledger accounts, documentation business translations. Calculate payroll for individual employees including withholding of appropriate Federal, State, City, Disability, taxes and insurance. In order to perform this job duty the Beneficiary must apply specialized knowledge in the fields of Accounting, Economics, Finance, and Financial Management, Managerial Accounting, Tax Accounting, Corporation Accounting. (15 Hours)
3. Prepare billing statements for international and domestic businesses as well as letters of credit based on the specialized knowledge of Accounting, Economics, Finance and Financial Management, Managerial Accounting, Tax Accounting, Corporation Accounting. (10 hours)

The director issued a request for additional evidence, which concisely stated, "Submit additional evidence that the position offered qualifies as a 'specialty occupation,' that is, evidence that the job requires services of the holder of at least a baccalaureate degree in the field of Accounting."

In reply, the general manager filed a letter which enclosed excerpts from two Department of Labor (DOL) publications: (1) a page addressing accountants, from the 1991 version of the *Dictionary of Occupational Titles (DOT)*, and (2) two pages on accountants and auditors, from the 1990-1991 revised edition of the *Occupational Outlook Handbook (Handbook)*. This letter repeated the duties that the general manager had listed in his earlier letter in support of the petition.

In this second letter, the general manager referred to the *DOT* for its description of accountant duties and for its classification of the accountant occupation as a profession. The letter asserts that the proffered position's duties conform to the *DOT* description of accountant positions, and that the *DOT* establishes that DOL "recognizes that the position of Accountant for our business is a 'specialty occupation' requiring the services of a 'professional' with the minimum of a Bachelor degree in Accounting or a closely related field such as Business."

The letter also asserts that the Act "specially stated . . . a degree in Accounting or [a] business specialty qualifies as a 'specialty occupation,'" because accounting is one of the fields listed at 8 C.F.R. § 214.2(h)(4)(ii).

The letter also pointed to the *Handbook* section on the accounting profession as evidence that "[t]he degree requirement is common in this profession."

The general manager also stated that, with regard to the proffered position, it has been the petitioner's practice to hire only persons with a bachelor's degree in accounting, business administration, or a closely related field. The general manager also, noted, however, that in the past the duties of the position were performed by persons outside the petitioner's corporation, such as Certified Public Accountants, who worked on a fee basis.

According to the letter, the job description provided by the petitioner indicates that the “job duties are professional in nature and require the services of an individual with a minimum of a bachelor’s degree in Accounting or Business with an emphasis in the accounting field.” Finally, the letter states that the complex developments in tax and insurance law have compelled the petitioner to establish this accounting position inside the corporation.

While the denial of the petition briefly notes the evidence submitted in response to the request for additional evidence, it also states, “Since you have not provided any additional evidence the petition will be adjudicated based on the evidence originally provided.” The director denied the petition for failing to proffer a specialty occupation position:

[T]he beneficiary’s proposed duties appear to be those of a bookkeeper. A review of the relevant portions of the OOH [*Handbook*], does not show that the position of bookkeeper requires [sic], as a minimum for entry into the field of study. Further, the evidence of record does not clearly establish that your company or industry requires a bachelor’s degree for this position.

On appeal, counsel maintains that the denial of the petition was based on the director’s mischaracterizing the proffered position as a bookkeeper’s job. To make his point, counsel notes the difference between accountant and bookkeeper duties as related in the 1991 revised version of the *DOT* and the *Handbook’s* 2000-2001 edition. Counsel also reviews and expands upon the duties of the proffered position.

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 AAO concurs with counsel that here the petitioner has proffered an accounting position, and therefore one belonging to a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Clearly, such proposed duties as the compilation and analysis of the corporation's financial data and the preparation of corporate tax returns and financial reports are beyond the scope of the bookkeeper occupation, which the *Handbook*, 2002-2203 edition, at page 390, indicates centers on financial recordkeeping, but not financial analysis or the preparation of corporate financial reports and tax documents.

The proffered duties fall within the scope of the management accountant occupation, described at page 21 of the *Handbook*, 2002-2003 edition:

Management accountants — also called industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for non-management groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting, and cost accounting. (Italics in original.)

According to the *Handbook*, at page 22, “Most accountant and internal auditor positions require at least a bachelor's degree in accounting or a related field.” Accordingly, because it is an authentic accounting position that normally requires at least a bachelor's degree in a specific specialty, the proffered position qualifies as a specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Therefore, the AAO cannot affirm the director's decision. This leads to the issue of whether the beneficiary is qualified to serve in the accountant specialty occupation position. The director did not address this issue. In light of these facts, the director's decision must be withdrawn and the matter remanded for entry of a new decision.

The request for evidence (RFE) previously issued in this proceeding did not address the beneficiary's qualification to serve in a specialty occupation. Therefore, to comply with 8 C.F.R. § 103.2(b)(8), the director must issue an additional RFE to provide the petitioner the opportunity to submit evidence regarding any deficiencies that the director identifies in the evidence so far submitted on the question of the beneficiary's qualification to serve in the specialty occupation in accordance with 8 C.F.R. §§ 214.2 (h)(4)(iii)(C) and (D). In accordance with 8 C.F.R. § 103.2(b)(8), the director shall allow the petitioner twelve (12) weeks to respond to the RFE.

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 5, 2002 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.