



U.S. Citizenship
and Immigration
Services

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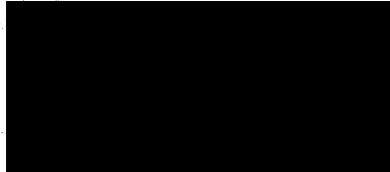


FILE: EAC 03 045 54621 Office: VERMONT SERVICE CENTER Date: **OCT 27 2008**

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

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prevent identity and warranted
invasion of personal privacy

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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 public accounting firm, and seeks to employ the beneficiary in the position of tax staff. 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 the beneficiary was not qualified to perform the duties of a specialty occupation. The director noted that the offered position qualified as a specialty occupation. On appeal, counsel submits a brief stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary qualifies to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty

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 offered position is that of a tax specialist. The beneficiary would: provide tax services to corporate clients; prepare and review federal, state, and local individual and corporate tax returns and related filings; prepare international tax filings such as computation of foreign tax credits; identify tax issues and perform detailed tax research; and prepare recommendation letters on tax matters. The director referenced the *Handbook's* description of duties performed by tax accountants. According to the *Handbook*, most accountant positions require a bachelor's degree in accounting or a related field.

The beneficiary possesses a bachelor's degree in philosophy, and a juris doctor degree, both from Boston College in the State of Massachusetts. The director held that the beneficiary's education was not sufficiently related to the proffered position to qualify the beneficiary to perform the duties of the position. The AAO does not agree. The duties of the offered position require the beneficiary to perform services in the areas of business law, regulatory compliance, and taxation. Advanced training in the field of law enables the beneficiary to ensure regulatory compliance with tax laws by corporate clients and individuals, and to provide the legal analysis and research of tax laws, regulations, and case law necessary to provide advice and consulting services to large business enterprises serviced by the petitioner. The beneficiary's education includes courses in corporations, taxation, business planning, securities regulation, contracts, transnational mergers, and commercial law. Courses in legal research, writing, and reasoning provide training necessary for the performance of research associated with the interpretation of laws, contracts, business issues, and regulatory matters for the petitioner's high profile business clients. The beneficiary's education is in a field closely related to the offered position, and the beneficiary is qualified to perform the duties of the offered position.

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 and the appeal shall accordingly be sustained.

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