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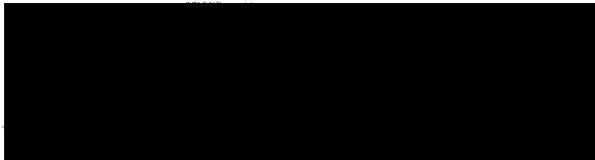
FILE: WAC 04 078 53130 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005

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 director of the California 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 wholesaler and distributor of professional beauty supplies and salon equipment, with ten employees. It seeks to employ the beneficiary as an accountant 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 determined that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (3) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of 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:

An 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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s January 13, 2004 letter of support; and the June 14, 2004 letter it provided in response to the director’s request for evidence. As described by the petitioner, the duties of the proffered position would require the beneficiary to:

- Provide accounting services, including cash flow and budgetary projections; the analysis and preparation of financial statements; the preparation of the petitioner’s balance sheet, and profit and loss statements; and the development of a customized computerized accounting system (60 percent of the beneficiary’s time);
- Provide tax services, including advice on new federal tax law and IRS policies; on California laws with tax-related consequences; assistance with IRS/state audits and identified tax liabilities (5 percent of the beneficiary’s time);
- Provide auditing services, including audits of the petitioner’s financial statements, loan covenants, contracts, and tax compliance (25 percent of the beneficiary’s time); and
- Provide consulting services, including evaluations of the petitioner’s business performance and profitability of its business relationships (10 percent of the beneficiary’s time).

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director determined that the record failed to establish that the petitioner engaged in the type of business that typically requires the services of an accountant. However, the discussion of the occupational title of accountants and auditors in the *Handbook* does not support the director's conclusion. It indicates, instead, that accountants perform in a range of business settings, working throughout private industry and government. The fact that the petitioner is a wholesale apparel business does not preclude its seeking to employ an accountant. Accordingly, the AAO withdraws the director's finding in this regard.

The petitioner has identified its proffered position as that of an accountant. Therefore, the AAO turns first to the 2004-2005 edition of the *Handbook* and its discussion of this occupation.

As stated at pages 68-69 of the *Handbook*, job duties vary widely among the four major fields of accounting: public, management, government, and internal. The closest category to the proffered position is that of management accountants, who:

[r]ecord and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement 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.

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting. To make this determination, the AAO must consider the petitioner's business operations.

While the size of a petitioner's business operations is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In cases where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that the proffered position's accounting duties would require a level of knowledge obtained only through a baccalaureate degree in accounting or its equivalent.

In the instant case, the record establishes the petitioner as a small business grossing more than \$6 million annually.<sup>1</sup> While the AAO does not find this level of income to demonstrate that the performance of all of the

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<sup>1</sup> Although the Form I-129 indicates the petitioner's gross annual income is \$2 million, the 2002 and 2003

duties described by the petitioner would be those of a degreed accountant, it has concluded that the auditing and tax-related responsibilities associated with a \$6 million business are of sufficient complexity to impose a baccalaureate degree requirement in accounting or a directly related field on the beneficiary. Therefore, the petitioner has established the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The director's finding to the contrary is withdrawn.

The AAO now turns to the record before it to determine whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. degree required by the proffered position. This evidence includes copies of the beneficiary's diplomas from the University of Santo Thomas in The Philippines documenting her 1987 bachelor of science degree in commerce, and the Ateneo de Manila University in The Philippines awarding her a master's degree in business administration; her academic transcripts from both institutions, and an

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federal tax returns submitted in response to the director's request for evidence report the petitioner's gross annual income as \$6,247,329 and \$6,109,330 respectively. The AAO has considered the income reported on the petitioner's tax returns for the purposes of these proceedings.

evaluation of her educational credentials by International Credential Evaluators (ICE), Inc. in Norman, Oklahoma. The ICE evaluation finds the beneficiary's baccalaureate degree in commerce to be the equivalent of a U.S. baccalaureate degree in business administration from an accredited university in the United States, and that, when combined with her post-graduate education, to provide her with the equivalent of a U.S. master's degree in business administration.

Based on its review of the documentation submitted by the petitioner, the AAO accepts the ICE evaluation as establishing the beneficiary's baccalaureate and master's degree equivalencies in business administration. However, CIS does not recognize a generalized business degree that does not have a specific concentration in a specific area of business as a degree required to perform a specialty occupation. *See Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). Accordingly, the ICE evaluation does not establish the beneficiary as qualified to perform the duties of the proffered position. To make this determination, the AAO turns to the beneficiary's transcripts to determine whether her undergraduate and/or graduate studies include a concentration in an academic field directly related to the work of accountants.

The record establishes that, at the undergraduate level, the beneficiary completed a total of 16 accounting, finance, economics, business/investment mathematics, business law, statistics, and taxation courses toward her Philippine degree in commerce. It also indicates that she completed two undergraduate computer-programming courses, knowledge described by the *Handbook* as an asset in accounting employment. Based on its assessment of the beneficiary's undergraduate record, the AAO finds the beneficiary to hold the equivalent of a U.S. baccalaureate degree in business administration, with a major in accounting or finance, and that this degree is directly related to the duties of the proffered position. Accordingly, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons previously discussed, the petitioner has established both that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petitioner's appeal is sustained.

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 met that burden.

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