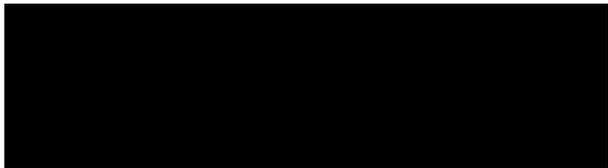




U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 053 50205 Office: CALIFORNIA SERVICE CENTER Date: DEC 22 2005

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:



**identity info data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY**

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.

for
Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner subsequently filed a complaint for declaratory judgment in the U.S. District Court for the Central District of California, and, pursuant to agreement, the matter is again before the AAO on its own motion to reopen. The AAO's previous decision is withdrawn. The appeal will be sustained, and the petition will be approved.

The petitioner is a property management and investment company that seeks to employ the beneficiary as an accountant and to classify him 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).

In its previous decision in this proceeding, dated April 21, 2005, the AAO upheld the director's dismissal of the petition on the basis that the evidence of record failed to satisfy any of the specialty occupation criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Upon reconsidering the evidence pursuant to its reopening of the proceeding, the AAO has determined that the petitioner has met its burden to establish that the proposed position is 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.

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 field of study that is directly related to the proposed position.

Upon reopening the proceeding and reconsidering the evidence of record, the AAO has determined that the record establishes that the proposed position is an accountant, and is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A). This determination is based upon the detailed and particularized description of the proposed duties provided by the petitioner.

The AAO turns to the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

An important factor CIS considers, to determine whether or not this criterion has been met, is whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires at least a bachelor's degree in a specific field of study. See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for an accountant, a bachelor's degree in accounting or a related field is required.

As the evidence establishes that the duties of the proposed position are those of an accountant and the *Handbook* indicates that accountant positions require bachelor's degrees in accounting or related fields, the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The AAO agrees that, although the position includes some bookkeeping duties, the majority of the duties are those of an accountant. As the AAO's previous decision was incorrect, it will be withdrawn.

The evidence of record establishes that the beneficiary holds the equivalent of U.S. bachelor's degree with dual majors of accounting and business administration. As this is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The previous decision of the AAO, dated April 21, 2005, is withdrawn. The appeal is sustained. The petition is approved.