



U.S. Citizenship
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DR

FILE: WAC 04 053 52389 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner retails computer software and accessories. It seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 proceeding 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) Form I-290B and supporting documentation. 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 Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail budget planning, cost accounting, analysis and preparation of management and government reports; analyzing financial information and preparing financial reports; compiling and analyzing financial information to prepare entries to accounts; documenting business transactions; analyzing financial information detailing assets, liabilities, and capital, and preparing balance sheets, profit and loss statements, and other reports that summarize current and projected financial positions; auditing contracts, orders, and vouchers; preparing reports to substantiate individual transactions prior to settlement; and establishing, modifying, documenting, and coordinating the implementation of accounting and accounting control procedures. For the proposed position the petitioner requires a bachelor's degree or its equivalent in accounting/commerce or a related degree.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity, nor engages in the type of business operation, to require the services of a part or full-time accountant. The director states that although the title of the proposed position is accountant, the proposed duties include "quality control to ensure conformity with professional standards." If the beneficiary performs some accounting duties, but is also performing basic bookkeeping and accounting clerical duties, the director stated that the proposed position is not that of an auditor or accountant. The director discussed *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), a case concerning evidentiary matters. The director found that the beneficiary would not be used exclusively to review, analyze, and report on accounting records, and that the proposed duties more closely resembled those of bookkeeping, accounting, or auditing clerks. The director further concluded that the evidence was insufficient to show that the proposed duties could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel asserts that the proposed position resembles a management accountant as that occupation is depicted in the *Handbook*. Counsel disagrees with the director's statement that accountants do not record financial data, stating that the *Handbook* portrays a management accountant as recording and analyzing financial data. Counsel maintains that the beneficiary's recordkeeping duties are incidental to his analytical duties and points to the submitted organizational chart to show that the petitioner already employs a bookkeeper. Counsel asserts that the director erred by stating that the proposed job description includes the

duty of “quality control to ensure conformity with professional standards.” Counsel states that the petitioner has revenue of \$6,736,385 and requires the services of an accountant. Counsel cites *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989), and states that the case indicates that a petitioner’s size and industry have no rational relationship to the need for a professional. “Any type of business that sells products or service and deals with numerous accounts is in need of an accountant” for billing, taxes, financial planning, and to avoid liability, counsel asserts.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) requires that a petitioner establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. In a November 26, 2003 letter the petitioner states that it retails computer software (games, operating systems, utilities, developer tools) and accessories such as cables, adapters, controllers, cellular items, and audio devices. The record contains the following: an organizational chart showing that the petitioner has nine employees including a bookkeeper; a payroll record listing seven employees for the quarter ending December 31, 2003 and wages paid of \$59,003; and an DE-6 form showing six employees for the quarter ending March 31, 2004 and wages paid of \$42,604. The Form I-129 indicates that the petitioner earned revenue of \$6,736,385. In light of the submitted evidence, the AAO finds that the proposed duties resemble those of an accountant as that occupation is depicted in the *Handbook*.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO will now address whether or not the beneficiary is qualified for the proposed position.

The record contains a copy of the beneficiary’s transcript and bachelor’s degree in commerce from an institution in the Philippine Islands. The petitioner did not submit an educational evaluation indicating that the beneficiary’s bachelor’s degree is equivalent to a U.S. bachelor’s degree in accounting or a related field, which the *Handbook* indicates is the educational requirement for an accountant. The petition, therefore, may not be approved as no evidence contained in the record demonstrates that the beneficiary is qualified to perform the duties of the specialty occupation – an accountant. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of an accountant, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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 August 18, 2004 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.