

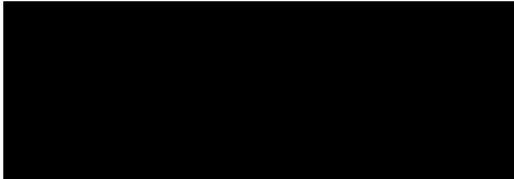
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U.S. Citizenship
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Services

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FILE: WAC 03 131 52663 Office: CALIFORNIA SERVICE CENTER Date: FEB 23 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:
[Redacted]

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 service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The AAO issued a summary dismissal based on the petitioner's failure to specify any erroneous conclusion of law or statement of fact for the appeal. The petitioner filed a motion to reopen. The motion will be granted. The appeal will be sustained. The petition will be approved.

The petitioner is a dental office that seeks 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 because the petitioner did not establish that the proffered position is a bona fide specialty occupation. On appeal, counsel submits a brief.

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 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; (5) Form I-290B; (6) the AAO's summary dismissal decision; and (7) the petitioner's

motion to reopen 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 I-129 petition; the February 16, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: preparing monthly financial statements such as balance sheets, income statements, and cash flow statements; preparing financial plans and comparing these plans against actual performance; discussing with management the financial position, income performance, and cash position of the two dental offices; monitoring collection of patients' accounts; recording daily collection and disbursement; preparing daily cash position reports; managing cash and other assets; checking vouchers payable before payments are made; checking deliveries and maintaining records of materials and supplies; preparing employee payroll; handling remittance of federal, state, and local taxes; maintaining and filing treasury and accounting records; and performing other tasks deemed necessary by management. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in commerce.

The director found that the proffered position was not a specialty occupation because the petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, counsel states that an accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. In addition, counsel provides an expert opinion letter and documentation from the Internal Revenue Service to establish that the petitioner will employ the beneficiary as an accountant.

The AAO agrees with counsel that the proffered position is an accountant, and is a specialty occupation.

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 AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that 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*, 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.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director found that the petitioner had not established that there was a "reasonable and credible offer of employment that is consistent with the needs of the petitioning organization." On appeal, counsel submits a letter from a Certified Public Accountant who worked with the petitioner in resolving significant payroll tax matters. He states that the petitioner's reliance on an offsite bookkeeper was one of the reasons for the petitioner's tax problems, which resulted in fines and penalties owed to the IRS of approximately \$40,000. Included with the appeal were copies of an IRS summons and various notices of intention to levy the petitioner's assets for unpaid taxes. This evidence establishes that the petitioner has had ongoing problems with accounting issues, and leads to the conclusion that the petitioner will employ the beneficiary as an accountant.

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 appeal is sustained. The director's order is withdrawn and the petition is approved.