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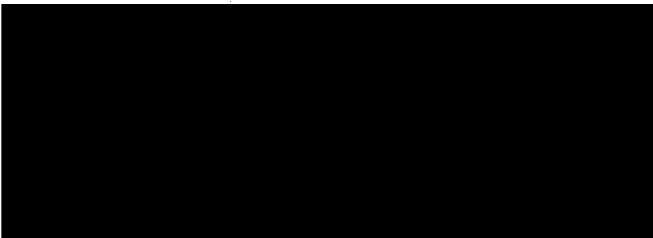
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FILE: WAC 03 263 50341 Office: CALIFORNIA SERVICE CENTER Date: **JUL 05 2005**

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 appeal will be sustained. The petition will be approved.

The petitioner is a textile company that seeks to employ the beneficiary as a part-time 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, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

The AAO will first address whether the proposed position is a specialty occupation.

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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the company 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 analyzing financial information and working with the owner in preparing budgets and cost and asset management; analyzing the company information that details assets, liabilities, and capital; preparing the balance sheet and profit and loss statement; preparing the income statement, balance sheet, and other reports to summarize the company's current and projected financial position; preparing the owner's equity statement; analyzing operation trends, costs, revenues, financial commitments and obligations to project future revenues and expenses; creating a subsidiary ledger for individual accounts and monitoring them; applying horizontal, trend, and vertical analysis to financial statements; applying ratio analysis to study the company's liquidity, profitability, and long-term solvency; appraising, evaluating, and conducting inventory of property and equipment, recording its value, and preparing a management report; calculating the price of inventory and applying inventory valuation; computing periodic depreciation; recording property and equipment transactions; developing, maintaining, and analyzing budgets and preparing periodic reports comparing budget costs to actual costs; preparing periodic and cash budgets; computing break-even points; analyzing forms, records, procedures, processing methods, and reports; developing, implementing, modifying, and coordinating the implementation of sound accounting control procedures and adapting accounting and recordkeeping functions to current technology; integrating control measures throughout the accounting system. The beneficiary will also account for cash and short-term investments. The petitioner stated that the beneficiary qualifies for the proposed position based on her education and work experience.

The director concluded that the proposed position is not a specialty occupation. The director stated that the petitioner did not establish that it is common among other organizations in the same industry to require the services of an accountant or demonstrate unique and specific needs for such services. The director stated that CIS does not simply rely on a position's title when determining whether a position is a specialty occupation; the duties to be performed, combined with the nature of the petitioner's operations, are factors that CIS considers. The director determined that the beneficiary's education, training, and work experience did not qualify her for a specialty occupation.

On appeal, counsel states that the petitioner's business entails processing raw materials into finished fabrics for clients. The petitioner does not manufacture or print the fabric; it sources raw materials and arranges for external fabricators (contractors) to convert the materials into the finished product, counsel states. Counsel explains that the petitioner's business has grown, and that the textile industry's extensive use of credit and need for inventory valuation necessitates the services of an accountant. According to counsel, the petitioner has used external accountants to prepare financial reports that are required to extend and procure credit, but this is expensive and unwieldy. Counsel states that bookkeepers are not equipped to provide the required

analysis and financial restatements needed to prepare commercial credit reports, financial statements, value inventory, cost evaluation, and budget reports. Counsel asserts that the beneficiary will perform cost accounting, schedule accounts payable and accounts receivable, and calculate inventory values, and that these are not bookkeeping duties. Counsel furthermore states that the beneficiary will perform standard accounting functions such as maintaining and enhancing existing accounting control procedures, and preparing preliminary financial reports for external certified public accountants from which they will prepare tax filings. Referencing the court's decision in an unpublished case, counsel states that CIS should defer to an employer's judgment rather than rely on generic governmental classification systems such as the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and the *Occupational Information Network* (the *O*Net*). Referring to the court's decision in *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) counsel asserts that the petitioner's size is irrelevant in determining whether the proposed position is a specialty occupation. Counsel points to submitted job postings to establish that a degree requirement is common to the industry.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. As described by the petitioner, a textile company with \$1.7 million in gross annual income, the beneficiary's duties resemble those of an accountant which is an occupation that the *Handbook* describes as requiring a bachelor's degree in accounting or a related field.

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

The AAO will now address whether the beneficiary is qualified to perform the proposed position.

The *Handbook* indicates that employers require a bachelor's degree in accounting or a related field for an accountant. The beneficiary is qualified to perform the duties of the proffered position. The record contains a copy of the beneficiary's transcript and degree, a bachelor in accountancy from the Polytechnic University of the Philippines, located in the Philippine Islands. The record also contains an educational evaluation from [REDACTED], which has determined that the beneficiary's studies are equivalent in level and purpose to a bachelor of science with dual majors in accounting and business administration awarded by regionally accredited colleges and universities in the United States. Thus, based on the evidence in the record, the beneficiary is qualified for the proposed 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.

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