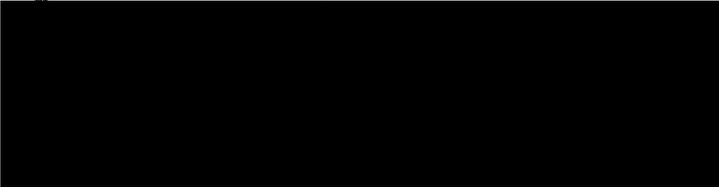


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FILE: WAC 04 079 54067 Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer and distributor of bubble wrap. It seeks to employ the beneficiary as an accountant and to classify her 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 on the ground that the record failed to establish that the beneficiary was qualified to perform the services of the 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, [and]
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the alien must meet one of the following criteria:

- (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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(D), whether the beneficiary's education, specialized training and/or experience is equivalent to a baccalaureate or higher degree from a U.S. university shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the [Citizenship and Immigration Services] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty . . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities <sup>1</sup> in the same

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

As explained in Form I-129 and supporting documentation, the petitioner manufactures and distributes bubble wrap protective packaging. The company was established in 1995 and by 2004, when the instant petition was filed, had 30 employees and annual revenues of \$3.3 million. The petitioner stated that its accountant position was open and that it sought to hire the beneficiary for the job. In a letter accompanying the petition and in the subsequent response to the RFE, the duties of the position and the percentage or amount of time required by each duty were described as follows:

- Write, update, audit, and maintain accurate general ledger and log of business accounts – 12%.
- Audit sales records, invoices, and statements to prepare periodic sales accounts performance reports reflecting costs, terms, and margins – 10%.
- Meet each week with sales staff to discuss sales accounts and internal audit and assist with exceptions adjustments – 4%.
- Respond to vendor and customer inquiries and problems and determine appropriate course of action – 10%.
- Perform accounts payable and receivable check voiding, reconciliation and code journal entries – 15%.
- Analyze unbilled receivables, purchase orders, and procedures in order to solve invoice and payment problems – 5%.
- Prepare quarterly internal financial statements – 8 to 10 hours quarterly.
- Review supporting documents and assist inventory audit, the preparation of annual financial statements and income tax returns with company's CPA – 20 hours per week during tax filing season.
- Provide necessary marketing support, merchandising, and inventory auditing and planning – 6%.
- Responsible for balance sheet and cash flow planning activities, including capital expenditures, working capital, and financing – 8%.
- Align and communicate with administration, sales, marketing, warehouse staff to collect, analyze and report on budgeting forecast – [4%].
- Drive accountability for forecast accuracy and demonstrate a record of continuous forecast improvement – 8%.
- Communicate extensively with all levels of staff to solve accounting problems – 10%.

- Perform other accounting-related duties as needed such as visiting the bank, attending conferences with managers, and making purchasing comparison and decisions on accounting software or system program – 8%.

The petitioner asserted that the beneficiary – who does not have a baccalaureate degree but graduated in 1976 from a business vocational school in her native Taiwan – was qualified for the position by virtue of more than two decades of professional experience in accounting or accounting-related positions. Submitted with the petition were the beneficiary's curriculum vitae, listing and describing her previous jobs for two companies in Taiwan, and letters from the company presidents confirming the beneficiary's employment and the nature of her positions. This documentation shows that the beneficiary worked for Shun Tai Wood Company as a bookkeeper (1978-1981), accountant (1982-1985), and account executive (1985-1988), and then for Yun Yih Enterprise Company, Ltd. as an accounting clerk (1988-1989), accountant (1990-1999), and financial manager (1999-2003). Three evaluations of her work experience were submitted from university professors, all of whom are associated with credentials evaluation services, declaring that the beneficiary's work experience was equivalent to a bachelor's degree in accounting from an accredited U.S. college or university.

In his decision the director noted that the beneficiary was not qualified to perform the services of a specialty occupation under the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C) because she does not hold a U.S. baccalaureate or higher degree, does not hold a foreign degree equivalent to a U.S. baccalaureate or higher degree, and does not hold a state license, registration, or certificate authorizing her to practice the pertinent specialty occupation. The petitioner was attempting to show that the beneficiary's training and work experience is equivalent to a U.S. baccalaureate degree in accounting, the director noted, which would qualify her under the fourth alternative criterion – 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) – to perform the services of the specialty occupation. The work experience evaluations in the record were an attempt to show the beneficiary's degree equivalency in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the director indicated, but failed to do so because they either did not demonstrate the evaluator's employment relationship with the university and/or his authority to grant college-level credit for training and experience in the field of accounting, did not show that the pertinent university is accredited, or did not demonstrate that the beneficiary has recognition of expertise in the specialty through progressively responsible positions in the field. The director concluded that the evaluations failed to establish the beneficiary's qualifications to perform the services of the accounting position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

On appeal the petitioner has supplemented two of the previously submitted credentials evaluations with additional documentation addressing the shortcomings cited in the director's decision. The record now establishes that one of the evaluations meets all of the evidentiary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) insofar as it is authored by a university professor with authority to grant college-level credit for training and/or experience in the specialty area of accounting at an accredited college which has a program for granting such credit based on an individual's training and/or work experience. The subject evaluation concludes that the beneficiary has 24 years of progressively responsible work experience in accounting and related areas, which far exceeds the number of years prescribed under the regulation (three years of specialized work experience for each year of education she lacks) for equivalency to a baccalaureate degree in accounting. Accordingly, the AAO determines that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of the proffered accounting position, which meets the statutory definition a specialty occupation because it requires the theoretical and practical

application of a body of highly specialized knowledge and a bachelor's degree or its equivalent in accounting, or a related specialty, for entry into the occupation. *See* the Department of Labor (DOL)'s *Occupational Outlook Handbook*, 2004-05 edition, at 70.

Thus, the record establishes that the beneficiary is qualified to perform the services of the specialty occupation of accounting.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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