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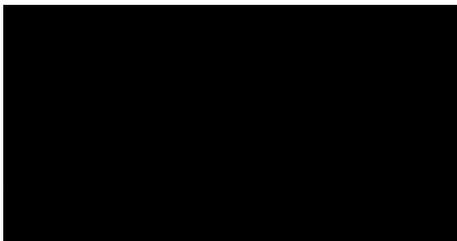
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FILE: WAC 04 183 53850 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2005

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 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 director of the California 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 real estate investment, development and management company, with eleven subsidiaries and branches in the United States. It seeks to hire the beneficiary as a full-time accountant. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; a June 15, 2004 letter of support from the petitioner; and the petitioner's July 1, 2004 response to the director's request for evidence, which included the percentage of time to be spent on each duty.

At the time of filing, the petitioner stated that the beneficiary would perform general accounting procedures for the petitioner, apply principles of general accounting and knowledge of taxes, customs and logistics. The petitioner stated that she would be required to assure that the accounting procedures continue to be in accord with Generally Accepted Accounting Procedures (GAAP) and Financial Accounting Standard Board (FASB) regulations. Her specific duties would include:

- Compile financial information to prepare accounting entries, including ledger reconciliation;
- Track and reconcile accounts receivable, accounts payable and monthly bank statements;
- Analyze financial information detailing assets, liabilities, and capital and prepare monthly financial reports, including Profit & Loss, Balance Sheet, Cash Flow, and Rolling Cash & Sales;
- Prepare all necessary financial reports in support of corporate tax return filings;
- Estimate budget, both annually and semi-annually;
- Prepare financial reports on income and expenditures for presentation to management in Japan.

Additionally, the petitioner noted the percentage of time breakdown for various duties as:

- Compile financial information (10% of time);
- Track & reconcile accounts (10% of time);
- Audit and analyze assets, liabilities & capital (10% of time);
- Prepare monthly financial reports (P & L statements, Balance Sheets, Cash Flow, Rolling Cash & Sales (27% of time);
- Prepare financial reports in support of corporate tax returns for all subsidiaries & divisions (5% of time);
- Develop budgets estimates on semi-annual basis (5% of time).
- Prepare financial reports for upper management at corporate headquarters in Japan (30% of time);
- Other (3% percent of time).

The petitioner stated that the proffered position is 100% responsible for all of the above-mentioned tasks and that this responsibility extends to all of its eleven subsidiaries and branches in the United States. The petitioner explained that each subsidiary has at least one operating account and one investment bank account. The petitioner stated that it has twelve accounts, which require reporting and reconciliation. The petitioner stated that each subsidiary has the company module in the software and that the beneficiary must be able to prepare consolidated financial reports for all the subsidiaries for reporting to the government and to headquarters in Japan. Additionally, the petitioner stated that the beneficiary would be responsible for preparing the required reports in support of state tax returns in each state where the petitioner has subsidiaries. To establish the complexities of the accounting position, the petitioner submitted examples of the types of work the proffered position would be responsible for. Additionally, the petitioner submitted an organizational chart and separate organizational charts for the various subsidiaries.

In his denial, the director found that the proposed duties appear to be the duties normally required of an accounting clerk.

On appeal, counsel emphasizes that the petitioner has eleven subsidiaries and branches in the United States. Counsel notes that the petitioner has major projects in several states that create employment for hundreds of people and are worth hundreds of millions of dollars. The petitioner states that it has assets of over \$125 million and gross revenues of \$8.1 million. Counsel refers to the petitioner's letter which explains it is essential for it to employ a degreed accountant because the petitioner is a large multi-national company with eleven subsidiaries and notes that while each subsidiary operates somewhat independently, all financial, accounting and tax reporting functions are consolidated with the petitioner under the responsibility of the proffered position. Additionally, counsel refers to an evaluation of the job duties written by a professor of finance that is submitted on appeal. This evaluation indicates that the position requires a candidate to be an accountant.

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*, 712 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 most positions for an accountant require a bachelor's degree in accounting or a related field.

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

The record reflects that the beneficiary has a Bachelor of Science in Business Administration (Accounting) from a university located in the United States, indicating that she is qualified for this specialty occupation.

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.