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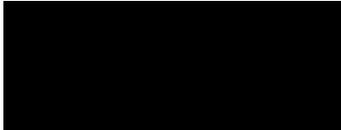
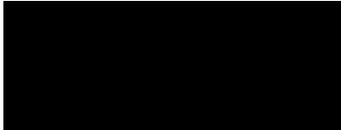
U.S. Citizenship  
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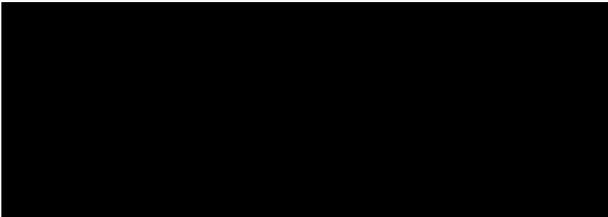
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FILE: WAC 03 013 55134 Office: CALIFORNIA SERVICE CENTER Date: **JUL 18 2005**

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, 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 appeal will be sustained. The petition will be approved.

The petitioner is a food manufacturer and distributor of candy and meat snacks that seeks to employ the beneficiary as a full-time 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 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 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 October 1, 2002 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: being responsible for the overall accounting and financial duties; preparing the petitioner's general ledger, as well as monthly and yearly financial reports; compiling and analyzing financial information with respect to the petitioner detailing the company's assets, liabilities, and capital; making recommendations to management with respect to tax strategies and advising them with respect to business decisions and transactions; preparing the firm's balance sheets, profit and loss statements, payroll, tax remittances as well as other reports to summarize the company's current and projected financial position; modifying and implementing accounting control procedures; monitoring budgeting, performance evaluation, and cost and assets management; devising a financial system that will help the company establish a more systematic and smooth inventory process; preparing the company's business letter correspondences for existing and prospective clients regarding transactions, financing, and billing statements; being responsible for accounting and inventory of the company's supplies.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in order to perform the accounting duties due to the complexity of the accounts and the volume of accounts that are maintained. The petitioner was established in 1978 and has approximately 102 employees. Its federal corporate income tax return indicates a gross annual income of 60 million dollars.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position described by the petitioner appear to reflect some of those performed by accountants. Additionally, the director noted that some of the beneficiary's duties would include preparing the petitioner's business correspondence and billing statements. The director noted that the petitioner did not employ any bookkeepers, and/or accounting or auditing clerks and that some of the listed duties are bookkeeping duties. Therefore, the director determined that the proffered position is not a specialty occupation.

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. On appeal, counsel explains that the beneficiary will engage exclusively in the review, analysis, and reporting of the petitioner's accounting records. Counsel states that employing a staff accountant, as opposed to contracting for an accountant through a staffing agency, the staff accountant will be familiar with the finances of the company. Counsel contends that the petitioner can support an accountant, although it does not have a formal accounting department. The size of the petitioner's annual gross income and the multiplicity of its business transactions dictate that the petitioner have access to an accountant to manage and oversee the company's operations. The petitioner's Federal Income Tax Return for tax year 2002 of record indicated gross sales of more than 60 million. The submitted payroll documents of record indicated more than 100 employees.

The AAO agrees that the record establishes 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 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 record reflects that the beneficiary has the equivalent of a bachelor's degree in accounting from an accredited university 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.