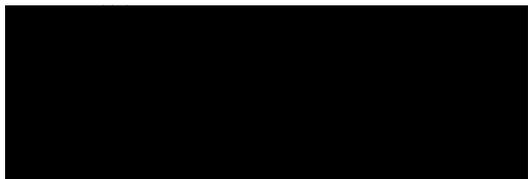


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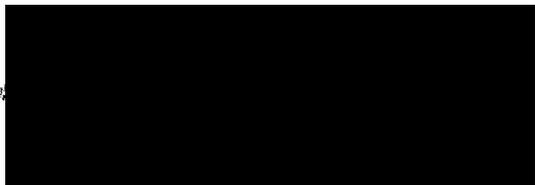
D2

FILE: WAC 04 037 50834 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 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 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 wholesaler and distributor of leather garments. It seeks to employ the beneficiary as an 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. On appeal, counsel submits a brief.

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 an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; 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 preparing balance sheets, profit and loss statements, and other financial reports to monitor cash flow and income; maintaining the general ledger, accounts payable and receivable, payroll, billing, and purchase orders; reconciling accounts and transfers between companies; reviewing purchase orders; maintaining, updating, and submitting budget amendments to management; calculating and preparing reimbursement billings and tracking receivables; reviewing and completing cash receipts and treasurers check journal entry postings; acting as back-up for accounts payable, cash receipting, bank depositing, purchase order issuance, and petty cash disbursement; assisting in computer applications; preparing fund balance projections; monitoring budget activity, expenditure coding, and document preparation; overseeing recordkeeping of fixed assets; collecting and analyzing data for financial reports; monitoring the performance of the accounting system and recommending and implementing improvements; assisting with the preparation of the annual and mid-year budgets and the fiscal year-end and fixed asset accounting; preparing and filing annual financial statements such as income tax returns; providing due diligence and periodic reports to comply with corporate reporting comparing budgeted costs to actual costs; verifying inventory movement by reviewing inventory transactions; analyzing trends, costs, revenues, financial commitments, and obligations to predict future revenues and expenses; reporting finances to management and suggesting resource utilization, tax strategies, and assumptions underlying budget forecasts. The petitioner stated that the beneficiary is qualified for the proposed position based on her holding two degrees: a bachelor of science in accountancy and a bachelor of business administration in banking and finance.

The director concluded that the proposed position is not a specialty occupation. The director stated that the beneficiary's duties are performed by bookkeeping or accounting clerks, as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that they do not require baccalaureate-level education. The director stated that it does not use a job title alone to determine whether a position qualifies as a specialty occupation, the specific duties combined with the nature of the petitioner's business operations are factors that CIS considers. The petitioner has not demonstrated sufficient organizational complexity, the director determined, to establish a realistic need for an in-house accountant. The director stated that businesses might hire an accountant on an as-needed basis to ensure proper recordkeeping, and hire bookkeeper/accounting clerks for daily financial transactions and recordkeeping. The director further stated that no evidence shows that the proposed position has complex or advanced accounting duties such as the preparation of detailed financial reports for outside agencies or corporate stockholders, or that the position requires a person with knowledge of sophisticated accounting techniques, which are normally associated with the duties of a corporate accountant. The director stated that the petitioner employs a secretary and a bookkeeper; that the bookkeeper holds a bachelor's degree in science, which is the degree held by the beneficiary; and that the secretary and the bookkeeper are able to perform the proposed position. The director stated that the size of a company or the fact that it is new is not necessarily a determining factor

in whether a job would qualify as a specialty occupation. The director described factors that CIS considers when determining whether a position qualifies as a specialty occupation.

On appeal, counsel narrates the beneficiary's proposed duties, and states that the proposed position is a specialty occupation. Referring to the *Handbook*, the *Dictionary of Occupational Titles (DOT)*, and the *Standard Occupational Code* and the *Occupational Information Network (SOC O*Net)*, counsel states that they reveal that the proposed position is analogous to an accountant, which is a specialty occupation. Counsel asserts that it is cost effective to employ an in-house accountant and that a bookkeeper does not perform accounting duties. Counsel discusses the court's decision in *Defensor vs. Meissner*, 201 F. 3d 384 (5th Cir. 2000). Counsel asserts that employing an accountant is within a petitioner's discretion; that CIS should not determine the requirements of a business; that the size and nature of a petitioning entity is not relevant; and that the complexity of a position determines its professionalism.

Upon review of the record, the petitioner has established that the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

A review of the *Handbook*, a resource that the AAO routinely consults to determine the duties and educational requirements of particular occupations, reveals that the proposed position's duties are performed by accountants, which is an occupation that requires a bachelor's degree in accounting or a related field. As such, the petitioner satisfies the regulation under 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

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

The AAO notes that the beneficiary is qualified for the proposed position. The record contains an educational evaluation from Global Education Group, Inc., which states that the beneficiary holds the equivalent to the U.S. degree of bachelor of business administration in banking and finance and accounting awarded by a regionally accredited college in the United States. The record contains a copy of the beneficiary's transcript and bachelor of science in commerce with a major in accounting, and a copy of her bachelor of science degree in commerce with a major in banking and finance from Rizal Memorial Colleges, Philippine Islands.

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.