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U.S. Citizenship
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Services

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MAR 18 2005

FILE: WAC 03 188 54281 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 supplier of computer peripherals including monitors and cameras. It seeks to employ the beneficiary as an accountant/financial analyst 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 proffered position is not 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the appeal (Form I-290B). The AAO reviewed the record in its entirety before issuing its decision.

As explained in Form I-129 and accompanying letter, the petitioner is the U.S. subsidiary and North American operation center of a Taiwanese computer monitor manufacturer. It seeks the beneficiary's services as an accountant/financial analyst and listed the duties of the position as follows:

- Provide corporate accounting and financial analysis for the multinational corporation at its U.S. head office (City of Industry, Los Angeles area). Set up, maintain business transaction accounts, implement and coordinate the parent and U.S. company's accounting systems to maintain consistency of inter-company monetary transactions. Audit inventory.
- Review and audit financial records including sales, customs clearance, shipping bills of inflow of manufactured products for sale in the North American market. Maintain general ledgers and separate ledgers.
- Analyze the Company's financial conditions, prepare financial statements and balance sheets, detailing profit, loss, assets, tax obligations to the Government. Prepare month end closings and bank reconciliation.
- Prepare Company's budget and participate in business planning including analyzing finances for operations of sales, marketing, inventory control and human resources development.

The petitioner indicated that a qualified candidate for the job must have at least a bachelor's degree in accounting or business administration. The record indicates that the beneficiary earned a bachelor of accounting degree at National Taipei University in Taiwan in June 1998 and a master of business administration (MBA) at Concordia University in Wisconsin on September 10, 2002.

In a letter responding to the RFE, counsel elaborated on the above-described job duties. He stated that the first two duties would take about 45% of the beneficiary's time and require the application of accounting principles, theories of financial management, and corporate business management. Counsel stated that the third duty listed above would take about 35% of the beneficiary's time and require knowledge and skills in financial accounting, financial analysis, business management, managerial accounting, and cost accounting. Counsel stated that the fourth duty would take about 20% of the beneficiary's time and require the application of knowledge and skills in managerial economics, international finance, strategic management and financial management.

The director found that the proffered position, regardless of its title, was neither an accountant nor a financial analyst. According to the director, the petitioner failed to demonstrate its need for such an employee in its business. In particular, the director noted the petitioner's failure to produce any evidence that businesses similar to its own in terms of their type of operations, number of employees, and amount of gross annual income required the services of individuals in parallel positions (*i.e.*, accountants or financial analysts). Nor did the petitioner present credible evidence, in the director's judgement, that its business had unique and specific needs for the services of an accountant or a financial analyst. The director concluded that the petitioner did not have a bona fide position which could be considered a specialty occupation.

On appeal counsel argues that the documentation of record establishes the petitioner's need for accounting and related services as well as the bona fides of the proffered position as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The AAO finds that the duties of the proffered position in this case accord with the *Handbook*'s description of an accountant. That description reads, in pertinent part, as follows:

Accountants and auditors help to ensure that the Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services to their clients . . . includ[ing] public, management, and government accounting, as well as internal auditing. Beyond the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Handbook, 2004-05 edition, at pages 68-69. Contrary to the director's view, the AAO is persuaded by the evidence of record that the beneficiary will be performing the services of an accountant. Federal tax returns show that that the petitioner's gross annual income more than doubled from 2000 to 2002. Those returns also show that the petitioner's expenditures for outside accounting services during each of those years approximately equaled the beneficiary's proposed salary as in-house accountant. In view of the petitioner's rapid growth, the nature of the business, and the specificity of the proposed job duties and required competencies described in the petition and in the response to the RFE, the AAO concludes that the proffered position is that of an accountant.

The *Handbook* goes on to state (at page 70) that most accountant positions require at least a bachelor's degree in accounting or a related field. The AAO concludes, therefore, that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

- (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 previously noted, the beneficiary holds a bachelor of accounting from National Taipei University in Taiwan and an MBA from Concordia University in Wisconsin. The record also includes an educational credentials evaluation from [REDACTED] & Associates, International Education Consultants, in Coral Gables, Florida, dated April 7, 2003, declaring that the beneficiary's degree from National Taipei University is equivalent to a U.S. degree of bachelor of business administration in accounting from an accredited academic institution in the United States. Based on the foregoing evidence the AAO determines that the beneficiary is qualified, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), to perform the services of the pertinent specialty occupation, as an accountant.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

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