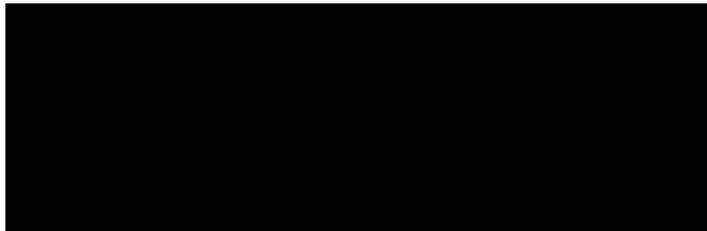




U.S. Citizenship
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FILE: LIN 02 029 54866 Office: NEBRASKA SERVICE CENTER Date: NOV 01 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the Vermont Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the director shall be withdrawn. The petition will be approved.

The petitioner is travel agency that seeks to employ the beneficiary as an accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(II)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(II)(i)(b). The director denied the petition on the basis that the proposed position fails to qualify as a specialty occupation.

On motion, counsel asserts that the preponderance of the evidence shows that the proposed duties parallel those of an accountant, which is a specialty occupation as shown in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the AAO did not consider the nature of the proposed duties. Counsel claims that the proposed position is a bona fide job; the submitted job postings to establish the petitioner's degree requirement; and that the AAO erred in finding that small businesses do not require an accountant's services. Counsel refers to a letter from Air Tours, Inc. and Trade Wings Travel, Inc. to show that a bachelor's degree is an industry-wide requirement among similar organizations; submits exhibits B and C (letters dated May 8, 2002 and August 7, 2003, respectively) to show that CIS previously approved H-1B petitions for similar positions in the petitioner's New York and Michigan offices; and submits a December 2, 2003 letter from the petitioner's controller, which states that the petitioner had previously obtained two H-1B approvals for similar positions.

The AAO grants the motion to reopen or reconsider.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

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 petitioner seeks to employ the beneficiary as a part-time accountant in its Chicago office. Tax records reflect that the petitioner's Chicago office generated gross receipts or sales of \$29,603,566 in 2001 and \$28,480,114 in 2000. The AAO finds that the record reflects that the proposed position resembles an accountant, which qualifies as a specialty occupation.

The AAO will next address whether the beneficiary is qualified to perform the proposed duties.

The record contains an educational evaluation from Trusteforte Corporation that indicates that a combination of the beneficiary's educational degree, a bachelor of commerce degree from an institution in India, and the beneficiary's completion of the Intermediate Examination of the Institute of Chartered Accountants of India, are equivalent to a bachelor of business administration degree with a concentration in accounting from an accredited institution of higher education in the United States. Based on this evidence, the beneficiary is qualified to perform the duties of the proposed position.

ORDER: The previous decision of the AAO dated November 7, 2003 and director dated June 12, 2002 shall be withdrawn. The petition will be approved.