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U.S. Citizenship
and Immigration
Services

Dr

FILE: WAC 03 060 50910 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a messenger services business that seeks to employ the beneficiary as a part-time accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 a part-time accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 26, 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: preparing, analyzing, and verifying the quarterly and yearly tax returns; performing audits; preparing payroll statements and deductions, monthly expense reports, and financial statements; preparing the general ledger, entries into the accounts, and monthly and yearly financial reports; monitoring information systems; detailing the petitioner's assets, liabilities, and capital; providing tax planning service; devising a long-range tax plan and recommending ways to reduce taxes; establishing more systematic and efficient inventory procedures; preparing the petitioner's balance sheets, profit-and-loss statements, checks, payroll, and tax remittances; modifying and coordinating the implementation of accounting and accounting control procedures; monitoring budgeting, performance evaluation, and cost-and-assets management; preparing letter correspondence with clients regarding transactions, financing, and billing statements; and analyzing and preparing billing statements. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping, accounting, or auditing clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an accountant, and is not a bookkeeper or accounting clerk. Counsel states further that the proposed duties, which include preparing tax returns, monitoring the petitioner's assets and liabilities, preparing and analyzing annual and quarterly corporate financial statements, and advising management concerning business decisions, are so specialized and complex as to require a bachelor's degree in accounting.

The proffered position is that of a part-time accountant for the petitioning entity, a messenger services business established in 1985, with approximately 30 employees and a gross annual income in excess of \$1 million. A review of the Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition, at page 70, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. In this case, the beneficiary holds a bachelor's degree in accounting conferred by a Filipino institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the U.S. equivalent of a Bachelor of Science in Accounting degree. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

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.