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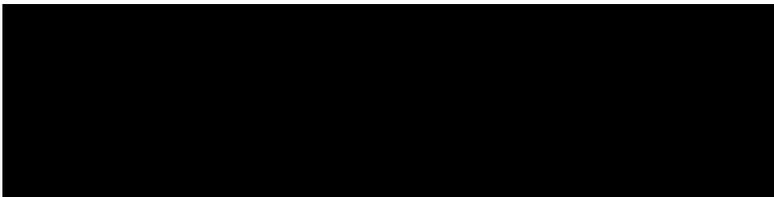
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FILE: LIN 04 079 54234 Office: NEBRASKA SERVICE CENTER Date: NOV 02 2005

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 Nebraska 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 business providing management and technology consulting services, with 75,000 employees. It seeks to employ the beneficiary as a finance and accounting manager. The director denied the petition because he determined the proffered position did not meet the requirements for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director; and (4) Form I-290B, including a letter from counsel, with additional and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks the beneficiary’s services as a financial and accounting manager. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s January 23, 2004 letter of support accompanying the Form I-129; and counsel’s February 17, 2004 response to the director’s request for evidence. In her February 17, 2004 letter, counsel described the duties of the proffered position as follows:

- Ensures compliance with corporate policies, maintaining procedures, and conducting transactions processing (10 percent of the beneficiary’s time);
- Opens and closes the general ledger period (10 percent of the beneficiary’s time);
- Maintains chart of accounts using Oracle and Hyperion technologies (25 percent of the beneficiary’s time);
- Records and posts journal entries (25 percent of the beneficiary’s time);
- Ensures resolution of interfacing issues (5 percent of the beneficiary’s time);
- Oversees and assigns reconciliations of accounts (10 percent of the beneficiary’s time);
- Reviews the generation and maintenance of management reports (5 percent of the beneficiary’s time);
- Conducts quarterly risk reviews and other controller functions (5 percent of the beneficiary’s time);
- Provides auditing support (5 percent of the beneficiary’s time); and
- Manages career development for team members, providing informal feedback, conducting training and arranging resources (5 percent of the beneficiary’s time).

In his denial, the director concurred with the petitioner’s assessment of the above duties as those of a financial manager, but found that the occupation did not impose a degree requirement or its equivalent. The AAO does not agree. Its reading of the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the director relied for his determination, finds its discussion of the occupation of financial managers to state that the minimal academic preparation required for employment is a bachelor’s degree in finance, accounting, economics or business administration. Accordingly, the director’s finding that the occupation of

financial manager is not a specialty occupation is withdrawn. Accordingly, the AAO will conduct a *de novo* review of the above duties to determine the nature of the petitioner's proffered employment and whether it qualifies as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

To make its determination whether the employment described in relation to the proffered position qualifies as a specialty occupation, the AAO first 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; and 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 considered by the AAO when determining these criteria include: whether the DOL *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has stated that it seeks the beneficiary's services as a financial and accounting manager. A description of the occupation of financial managers is found at pages 39-40 of the 2004-2005 edition of the *Handbook*:

Almost every firm, government agency, and organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. As computers are increasingly used to record and organize data, many financial managers are spending more time developing strategies and implementing the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. *Treasurers and finance officers* direct the organization's financial goals, objectives, and budgets. They oversee the investment of funds and manage associated risks, supervise cash management activities, execute capital-raising strategies to support a firm's expansion, and deal with mergers and acquisitions. *Credit managers* oversee the firm's issuance of credit. They establish credit-rating criteria, determine credit ceilings, and monitor the collections of past-due accounts. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations.

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of the firm *Risk and insurance managers* oversee

programs to minimize risks and losses that might arise from financial transactions and business operations undertaken by the institution. They also manage the organization's insurance budget.

...

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Financial managers now perform more data analysis and use it to offer senior managers ideas on how to maximize profits. They often work on teams, acting as business advisors to top management

In light of the above description, the AAO does not find the proffered position to be that of a financial manager. The duties described by the petitioner do not reflect the complexity or range of responsibilities typically shouldered by financial managers. Nor do they indicate that the beneficiary would exercise the authority of a financial manager. Although the AAO agrees that the beneficiary would perform duties that fall within the sphere of financial management, these duties appear limited to the establishment, maintenance and oversight of financial records and reports, and, as such, are more reflective of the work of accountants than of financial managers.

As indicated by the *Handbook*, at pages 68-69, management accountants, the field of accountancy closest to the proffered position:

record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need to make sound business decisions Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

In that these duties appear closely aligned to those listed by the petitioner, the AAO finds the proffered position to be that of an accountant.

Confirmation that the proffered position would require the beneficiary to perform as an accountant is found in counsel's March 25, 2004 letter, submitted on appeal. In this letter, counsel indicates that the petitioner seeks to employ the beneficiary to support a contract under which it is providing financial and accounting services to a client with business interests in 12 Latin American countries. She states that the beneficiary would provide accounting support for the client's business units and infrastructure departments, would be involved in financial statement preparation and monthly reporting to the client's headquarters, would support internal and external auditors and tax specialists, and would apply analytical skills in assessing concepts and principles and propose alternative solutions. Such duties are routinely performed by accountants.

As the *Handbook's* discussion of the occupation of accountants indicates that most accountant positions require at least a bachelor's degree in accounting or a related field (page 70), the AAO concludes that the petitioner has successfully established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to the record to determine whether it establishes the beneficiary as qualified to perform the duties of a specialty occupation. In making this determination, CIS looks to the petitioner to prove that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) – full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

To establish the beneficiary as qualified to perform the duties of its proffered position, the petitioner has submitted evidence of his degree from San Carlos University of Guatemala, including a transcript of the courses and examinations he completed, and an evaluation of his academic record, prepared by the Foundation for International Services, Inc. (FIS) in Bothell, Washington. The degree certificate, issued by the secretary of the faculty of economic sciences at San Carlos University, states the beneficiary completed his accounting studies in December 1990 and passed the examination necessary to be awarded the *licentiate* degree of certified public accountant and auditor in 1993. The FIS evaluation of this degree, which indicates the reviewer also considered the transcript of the beneficiary's coursework, finds it to be the equivalent of a bachelor's degree in accounting from an accredited college or university in the United States.

The AAO will accept the FIS evaluation of the beneficiary's degree. Although the academic transcripts submitted at the time of filing and updated in response to the director's request for evidence appear to identify only those courses related to the beneficiary's degree in accounting, rather than the full range of courses necessary to support a baccalaureate degree, the AAO finds the degree certificate's documentation of the beneficiary's *licentiate* degree* in accounting to provide sufficient evidence to support the FIS assessment. The AAO, therefore, concludes that the petitioner has established that the beneficiary holds a foreign degree equivalent to a U.S. baccalaureate in accounting and is qualified to perform the duties of the proffered position of accountant, pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

For reasons related in the preceding discussion, the petitioner has established both that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and that the beneficiary is qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Accordingly, the AAO withdraws the director's denial of the petition.

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.

* On-line research conducted by the AAO indicates that *licentiate* or *licenciatura* degrees in Guatemala are awarded only after four to six years of study at the university level.