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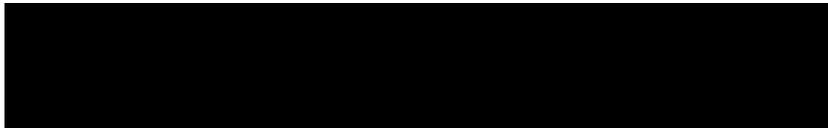
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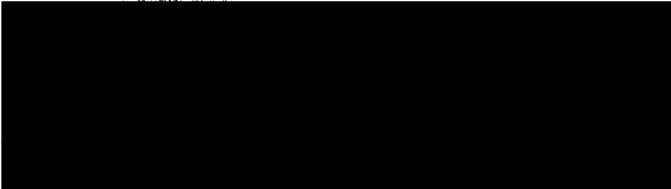
FILE: WAC 03 081 54753 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

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, 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 construction contractor. In order to employ the petitioner as an accountant, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO finds that director erred in not approving the petition, as the evidence of record does establish that the petitioner has proffered a position that requires at least a bachelor's degree in accounting.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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." (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In his brief on appeal, counsel provided this description of the proffered position that fairly comports with the evidence in the record of proceeding:

[The beneficiary’s] primary responsibilities include preparing and analyzing quarterly and yearly tax returns. She will perform audits and prepare payroll statements, deductions, monthly expense reports and financial statements. In addition, [the beneficiary] will detail the company assets, liabilities, and capital and provide tax planning advice. She will review the company finances to devise tax strategies and make recommendations on the advantages and disadvantages of certain business decisions or transactions. [She] will monitor the company’s budgeting, performance evaluation, and cost and assets management. She will analyze the financial situation of the company and report her findings to management. [She] will also devise a financial system that will help the company establish a more systematic and smooth procedure. She will modify and coordinate implementation of the accounting and control procedures. Additionally, she will oversee the accounts payable and payroll clerks.

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 (5<sup>th</sup> 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.

As noted by counsel, the director's decision indicates some misconceptions about the elements of a specialty occupation.

The fact that some duties, such as clerical tasks or bookkeeping, do not require at least a bachelor's degree or its equivalent does not preclude a position from qualifying as a specialty occupation: where the evidence establishes that performance of some of the regular duties of a position requires at least a bachelor's degree or the equivalent in a specific specialty closely related to those duties, the position is a specialty occupation. A position may qualify as a specialty occupation even if some of its duties do not require at least a bachelor's degree in a specific specialty.

There is no basis for the director's proposition that a petitioner for an H-1B accountant position must be at a government agency or within a limited range of business enterprises (the director specified "a public accounting firm, a payroll services firm, a tax preparation firm, [or] a computer accounting systems or software developer.") In particular, the Department of Labor's *Occupational Outlook Handbook* section on accountants does not state or imply that accountants are to be found only within certain types of business.

The petitioner has established that it has a gross annual income of over \$14,000,000.00 and employs more than 400 persons. In this particular case, the totality of the information that the petitioner provided about its business operations and about the duties of the proffered position satisfies the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). There is sufficient evidence in the record of proceeding that the proposed petitioner is proffering an accountant position characterized by duties for which employers normally require a bachelor's degree or its equivalent in accounting or a related specialty. Accordingly, the proffered position is a specialty occupation.

As the record's educational evaluation and associated documentation establish that the beneficiary holds a foreign degree that is equivalent to a United States bachelor's degree in accounting, the petitioner has established that the beneficiary is qualified to perform the services of the proffered position in accordance with the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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 petition is approved.