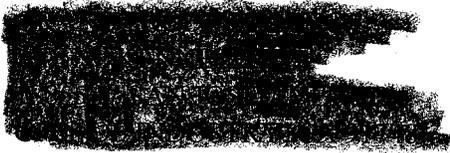




U.S. Citizenship
and Immigration
Services

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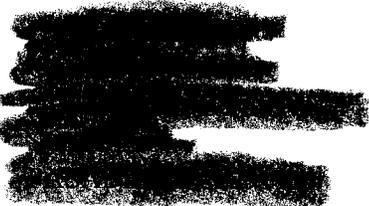
D 2

FILE: WAC 04 130 50721 Office: CALIFORNIA 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

NOV0205_20D2101

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a distributor and wholesaler of floral arrangements that seeks to employ the beneficiary as a full-time 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 because the petitioner did not establish that the proffered position is specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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; (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 an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the April 1, 2004 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, in part: being responsible for preparing the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements; setting up computerized accounting system that will retain all of the information to prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports and financial statements; implementing a general accounting system for keeping accounts and records of disbursements, expenses, tax preparation, tax payments and general ledgers; preparing balance sheets reflecting company's assets, liabilities and capital; performing operational, compliance, financial and investigative audits and preparing reports; analyze company accounting systems to determine their efficiency and protective value; prepare reports of findings and recommendations for company management; and examining, analyzing, and interpreting accounting records for the purpose of providing tax planning advice. The petitioner indicated that the minimum requirement for the position is a bachelor's degree in accounting or its equivalent.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in order to perform the accounting duties due to the complexity of the accounts and the volume of accounts that are maintained. The petitioner was established in 1996 and has approximately 20 employees. Its federal corporate income tax return indicates a gross annual income of \$2.36 million dollars.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position described by the petitioner appear to reflect some of those performed by accountants. The director noted that the petitioner had only one bookkeeper or accounting clerk in its accounting and/or finance department to maintain its registers. Additionally, the director noted that the petitioner has an accounting manager and finance manager or executive and does not need an accountant. The director determined that although there are plenty of personnel to review and supervise, there are not enough employees to actually perform the most basic of accounting clerical and booking duties. Therefore, the director determined that the proffered position is not a specialty occupation.

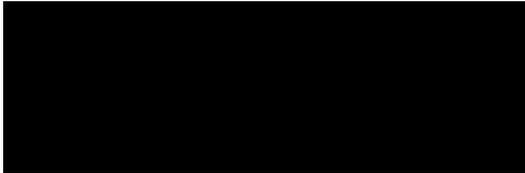
On appeal, counsel states that an accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. On appeal, counsel explains that the beneficiary will engage exclusively in the review, analysis, and reporting of the petitioner's accounting records. Counsel explains that the petitioner lost the services of its controller and its chief financial officer needs assistance. Counsel explains that the incumbent in the proffered position would assume some of the controller's duties and will perform financial and investigative audits for the controller. Counsel contends that the petitioner can support an accountant and that 90% of the proffered positions duties are those of an accountant. Counsel explains that the majority of the beneficiary's duties are examining, analyzing, and interpreting the accounting records and reports to summarize and forecast positions and to assist the chief financial officer. The petitioner's Federal Income Tax Return for tax year 2002 of record indicated gross sales of more than \$2.3 million and salaries of approximately \$500,000.



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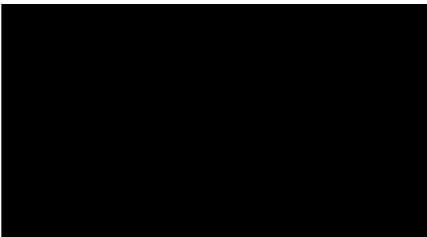
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This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a distributor and wholesaler of floral arrangements that seeks to employ the beneficiary as a full-time 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 because the petitioner did not establish that the proffered position is specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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;
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- (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; (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 an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the April 1, 2004 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, in part: being responsible for preparing the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports, and financial statements; setting up computerized accounting system that will retain all of the information to prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports and financial statements; implementing a general accounting system for keeping accounts and records of disbursements, expenses, tax preparation, tax payments and general ledgers; preparing balance sheets reflecting company's assets, liabilities and capital; performing operational, compliance, financial and investigative audits and preparing reports; analyze company accounting systems to determine their efficiency and protective value; prepare reports of findings and recommendations for company management; and examining, analyzing, and interpreting accounting records for the purpose of providing tax planning advice. The petitioner indicated that the minimum requirement for the position is a bachelor's degree in accounting or its equivalent.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in order to perform the accounting duties due to the complexity of the accounts and the volume of accounts that are maintained. The petitioner was established in 1996 and has approximately 20 employees. Its federal corporate income tax return indicates a gross annual income of \$2.36 million dollars.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position described by the petitioner appear to reflect some of those performed by accountants. The director noted that the petitioner had only one bookkeeper or accounting clerk in its accounting and/or finance department to maintain its registers. Additionally, the director noted that the petitioner has an accounting manager and finance manager or executive and does not need an accountant. The director determined that although there are plenty of personnel to review and supervise, there are not enough employees to actually perform the most basic of accounting clerical and booking duties. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel states that an accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. On appeal, counsel explains that the beneficiary will engage exclusively in the review, analysis, and reporting of the petitioner's accounting records. Counsel explains that the petitioner lost the services of its controller and its chief financial officer needs assistance. Counsel explains that the incumbent in the proffered position would assume some of the controller's duties and will perform financial and investigative audits for the controller. Counsel contends that the petitioner can support an accountant and that 90% of the proffered positions duties are those of an accountant. Counsel explains that the majority of the beneficiary's duties are examining, analyzing, and interpreting the accounting records and reports to summarize and forecast positions and to assist the chief financial officer. The petitioner's Federal Income Tax Return for tax year 2002 of record indicated gross sales of more than \$2.3 million and salaries of approximately \$500,000.

The AAO agrees that the record establishes that the proffered position is an accountant, and is a specialty occupation.

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 AAO 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for an accountant, a bachelor's degree in accounting or a related field is required.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary has the equivalent of a bachelor's of business administration in accounting degree from an accredited university in the United States, indicating that she is qualified for this specialty occupation.

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.