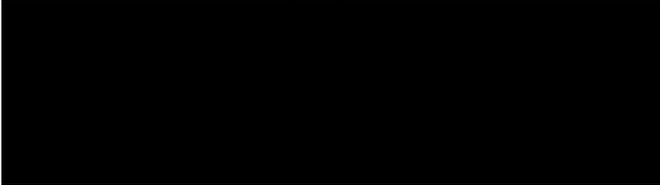


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



DZ

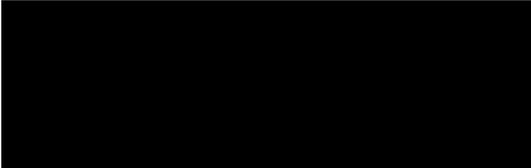
FILE: WAC 02 253 52292 Office: CALIFORNIA SERVICE CENTER Date: **NOV 02 2005**

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 petition will be approved.

The petitioner is a vehicle repair center 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)(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 and the beneficiary is not qualified to perform the duties of the specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 requests for additional evidence; (3) the petitioner's responses to the director's requests; (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 an accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 26, 2002 letter in support of the petition; and the petitioner's responses to the director's requests for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: analyzing, comparing and interpreting facts and figures; making sound financial judgments based upon her knowledge and experience; preparing, analyzing and verifying financial reports; tracking company expenses; and staying up-to-date on changes relating to taxes, financial reporting standards, business investments, mergers and other financial matters through continued research in the field. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting, finance, business administration, mathematics or a related field.

The director found that the proffered position was not a specialty occupation because the position is that of a financial record keeper. The director also stated that the petitioner never established that it had previously employed a bookkeeper or an accountant to handle its financial transactions.

On appeal, the petitioner asserts that the proffered position is an accountant, and not a financial record keeper. The petitioner states that the position requires a bachelor's degree in accounting or finance. The petitioner also states that it assumed that it was clear that an accountant would need to have a bachelor's degree in accounting or a related field.

The AAO agrees with counsel that a position as an accountant is generally a specialty occupation and that the proffered position is an accountant.

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 first 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. The petitioner has over 40 employees and a gross annual income of approximately \$3.2 million,¹ and a high volume of business, with multiple vendors and transactions. The record establishes that the duties of the proffered position are those of an accountant. 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 beneficiary has an associate's degree in hotel and restaurant management from a foreign college, a bachelor's degree in hotel, resort and food service management from a United States university, and a certificate in general business studies with a concentration in finance from a United States university. The petitioner submitted an evaluation from Morningside Evaluations and Consulting, which stated that the beneficiary's education is equivalent to a bachelor's degree in finance from a United States university. The beneficiary is qualified to perform the services of an accountant.

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.

¹ The AAO notes that the petitioner stated on its Form I-129 that it had an income of \$5 million, however, the tax returns in the record indicate that the petitioner's income for 2001 was \$3,199,313.