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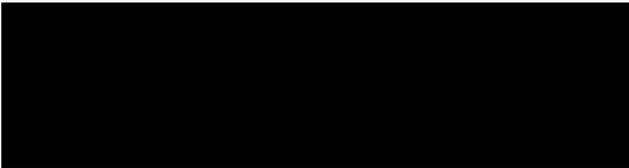
DZ

FILE: WAC 03 258 53005 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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a provider of computer and electronics hardware, software and technical support. It seeks to employ the beneficiary as an accountant and to extend her classification 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as an online re-seller of computer and electronics hardware, software, and accessories, and a provider of technical support to its clients. The business was established in 1990, the petitioner stated, and had 33 employees and gross annual income of \$40 million at the time of filing. The petitioner indicated that it wished to retain the services of the beneficiary as an accountant – a position in which she was already employed pursuant to a prior H-1B petition approved in February 2001 – so that she could continue to perform the following duties:

- Budget planning.
- Cost accounting.
- Financial analysis.
- Preparation of required management and government reports.
- Application of principles of accounting to analyze financial information and prepare financial reports.
- Compilation and analysis of financial information to prepare entries to accounts, such as general ledger accounts.
- Documentation of business transactions.
- Analysis of financial information detailing assets, liabilities and capital.
- Preparation of balance sheets, profit and loss statements and other reports to summarize current and projected company financial positions.
- Audit of contracts, orders and vouchers, and preparation of reports to substantiate individual transactions prior to settlement.
- Establishment, modification, documentation and coordination of implementation of accounting and accounting control procedures.

In response to the RFE the petitioner provided additional details about the duties the beneficiary performs. According to the petitioner, 30% of her time (12 hours/week) is spent analyzing and preparing financial reports, 20% of her time (8 hours/week) is spent directing the preparation of entries into general ledger accounts, 20% of her time (12 hours/week) is spent in preparing reports (bids) and analysis, and 30% of her time (12 hours/week) is spent in contract administration, budget planning and cost accounting. The foregoing duties, the petitioner explained, involve the following elements:

- Contract Administration – review contract as required to substantiate transactions.
- Cost Accounting – evaluate costs in order to determine true cost of production and prepare reports . . . to assist the company in setting rates (terms/prices).
- Credit Analysis – evaluate vendors and suppliers to extend respectively credit and insure viability and reliability.
- Transactional Accounting – compile and analyze financial data and document business transactions.

The petitioner also submitted its organizational chart and a list of employees showing their job titles and immigration status, quarterly wage and withholding reports for the last two quarters of 2003 and the first quarter of 2004, and its federal income tax return for 2002.

In his decision the director found that while some of the duties of the proffered position involve accounting tasks, a significant amount of the beneficiary's time would be spent performing the duties of a

bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, positions which do not require a baccalaureate or higher degree. In the director's view, there were two reasons the proffered position could not be classified as an accountant position. The first was that the petitioner's organizational chart lists four accountants, but no bookkeeping, accounting, or auditing clerk currently employed by the company. The director concluded that duties normally performed by accounting, bookkeeping, and auditing clerks "would clearly be a part of the duties of the position offered" and that any duties normally performed by an accountant "would only be incidental to the primary duties." The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engaged in the type of business for which an accountant would typically be required for any significant length of time. In particular, the petitioner's business operations were not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting functions. The director also determined that the petitioner failed to show that the duties of the position are so specialized and complex that they require baccalaureate or higher level knowledge to perform them. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the duties of the proffered position are primarily those of a bookkeeping, accounting, and auditing clerk, rather than those of an accountant. With regard to the issue of who performs the company's bookkeeping functions, counsel indicates that the petitioner has an office in the Philippines that employs a number of bookkeepers who transfer compiled data to the headquarters office in Los Angeles to be analyzed by the company's accountants. The petitioner's large volume of business, counsel explains, requires the services of multiple accountants. The fact that the beneficiary's duties may include some incidental bookkeeping tasks, counsel contends, does not detract from the fact that the primary duties of the position involve accounting functions, consistent with the description of accountants in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the duties of the proffered position accord with the *Handbook's* general description of the accounting occupation.

Accountants and auditors help to ensure that the Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services to their clients . . . includ[ing] public, management, and government accounting,

as well as internal auditing. Beyond the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services

Handbook, 2004-05 edition, at 68. As further explained in the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant best describes the proffered position in this petition.

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas including financial analysis, planning and budgeting and cost accounting.

Handbook, 2004-05 edition, at pages 68-69. Based on the entire record – including documentation of the petitioner’s organizational structure, the volume of business it transacts, and the specificity of the accounting duties described by the petitioner, the AAO is persuaded that the beneficiary will be performing the services of an accountant in the proffered position.

The *Handbook* states that most accountant positions require at least a bachelor’s degree in accounting or a related field. *See id.* at 70. The AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (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.

The record includes copies of the beneficiary's educational degree and transcripts showing that she graduated with a four-year bachelor of science in business administration, with a major in economics, from the Philippine School of Business Administration in Quezon City, the Philippines, on April 9, 1988. The beneficiary's degree included substantial coursework in accounting and related subjects. The record also includes an academic evaluation report from an educational evaluation and assessment service in Athens, Georgia, declaring that the beneficiary's degree is equivalent to a bachelor of business administration in economics from an accredited college or university in the United States. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform the services of the pertinent specialty occupation – an accountant – in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

ORDER: The appeal is sustained. The petition is approved.