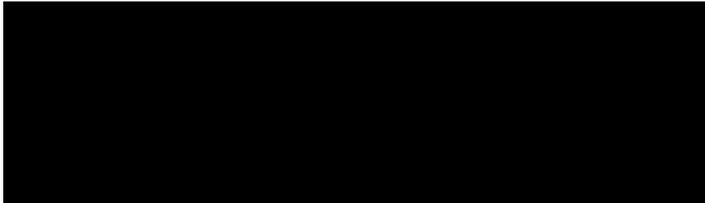




U.S. Citizenship
and Immigration
Services

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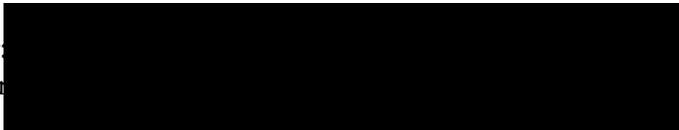
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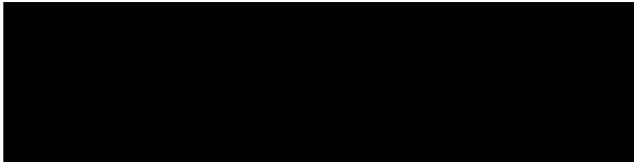
FILE: WAC 03 080 55255 Office: CALIFORNIA SERVICE CENTER Date: **OCT 17 2005**

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is an international trading company and subsidiary of the Poongsan corporation headquartered in Seoul, South Korea. It seeks to employ the beneficiary as an accountant and endeavors to classify her 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

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

[A]n 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 are 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) the 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; and (5) the Form I-290B with counsel's brief. 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 with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: be responsible for the overall accounting and financial duties of the company; handle the preparation of the company's general ledger and monthly financial reports; analyze operations, trends, cost, revenues, financial commitments, and obligations incurred to project future revenues and expenses; develop, maintain, and analyze budgets; and prepare balance sheets, profit and loss statements, necessary checks, tax remittances and other reports to summarize the company's current and projected financial position. The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be those noted for accountants. The *Handbook* notes that management 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. Management accountants are usually 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. Management accountants also prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. The petitioner's tax return for 2002 indicate that it had gross sales and receipts of \$5,624,374 during its first year of operation. The petitioner purchases raw materials, machineries, spare parts and chemicals for its holding company in Korea, and also sells its parent company's finished products in the United States. In this instance the beneficiary analyzes financial data and prepares reports/financial statements that are relied upon by management in making business decisions for the company. The duties of the proffered position are of such complexity that their performance requires the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* notes that most

accountant and auditor positions require at least a bachelor's degree in accounting or a related field. The proffered position does, therefore, qualify as a specialty occupation as it satisfies the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petition may not be approved, however, as the record does not reflect that the beneficiary is qualified to perform the duties of the specialty occupation. The director did not comment on the beneficiary's qualifications to perform the duties of a specialty occupation as the petition was denied on another ground. The record is insufficient for the AAO to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. The beneficiary obtained a bachelor's degree in business administration with a major in accounting from the University of the East in the Philippines. The record does not contain, however, an evaluation of the beneficiary's foreign education by a credentials evaluation service to determine the equivalency of the degree to those offered by United States universities. As such, this matter must be remanded to the director to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. The director may request such additional evidence as he deems necessary before rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.