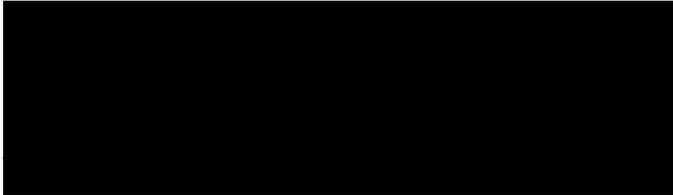


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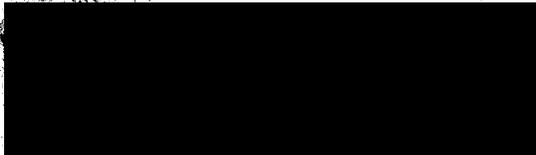
FILE: WAC 04 022 50456 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 2005

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 materials 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. 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 in an acute care hospital. It seeks to employ the beneficiary as an accountant and 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 on the ground that the petitioner failed to respond adequately to the request for evidence about its business operations, precluding a material line of inquiry, and thereby failed to meet its burden of proof to establish its eligibility for the subject benefit.

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, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial documentation, including Form I-129 and an accompanying letter, the petitioner described itself as an acute care hospital, incorporated in 1979, with 300-350 employees, gross annual income of \$63 million, and net annual income of \$23 million. The petitioner stated that it proposed to hire the beneficiary as a full-time accountant and described the duties of the position as follows:

- In general, perform all aspects of Financial Accounting for the company such as journalizing, posting, preparation of the trial balance, preparation of adjustments, and worksheets.
- Prepare the financial statements such as the Balance Sheet, Income Statement, the Statement of the Cash Flows, and the Statement of Retained Earnings.
- Prepare and file state and federal tax returns and reports.
- Interpret for the management the results of the company's operations as reflected in the financial statements.
- Interpret the basic and complex ratios that may be derived from the financial statements in order to safeguard the financial health of the company.
- Assist management in the preparation of monthly, quarterly, and annual budgets and reports.
- Act as the company's consultant on financial accounting matters.

The petitioner stated that the minimum educational requirement for the position is a bachelor's degree in accounting. The record shows that the beneficiary received a bachelor of science in commerce, with a major in accounting, from San Nicolas College in Surigao City, the Philippines, on March 27, 1988.

In the RFE (Form I-797) the director requested additional documentary evidence of the requirements of the proffered position and the beneficiary's qualifications, as well as documentation showing that the petitioner is a valid business entity and employer. With regard to the petitioner, the following specific materials were requested: a company profile; federal and state income tax returns for 2002; state and federal quarterly wage reports for the last three quarters (Forms DE 6 and 941, respectively); a payroll summary (W-2 and W-3 forms for all employees); a list of employees with job titles and current immigration status; an organizational chart; approval notices (Form I-797As) for all H or L nonimmigrant employees; photographs of the business premises; the petitioner's telephone directory listing; as well as published articles and advertisements pertaining to the petitioner.

In its response to the RFE, submitted in April 2004, the petitioner stated that due to its "very busy tax season schedule" it was unable to submit any of the requested documentation pertaining to the petitioner. Instead, the petitioner submitted a copy of its audited comparative financial statements for the years 2001 and 2002.

In his decision the director stated that the petitioner had not submitted any evidence concerning the nature, operations, complexity, and structure of its business. The director noted, in particular, the petitioner's failure to comply with the specific request for an organizational chart. Failure to offer a complete response to an RFE is grounds for denial, the director observed, citing the regulation at 8 C.F.R. § 103.2(b)(14). The director concluded that the petitioner had not met its burden of proof to establish its eligibility for the requested benefit, and denied the petition on that ground.

On appeal counsel asserts that the evidence of record establishes that the petitioner is a bona fide United States employer, as defined in the regulation at 8 C.F.R. § 103.2(h)(4)(ii); restates previously provided information about the petitioner's year of incorporation, number of employees, and income level; and contends that the previously submitted comparative financial statements for 2001 and 2002 provide substantial information about the nature, operations, complexity, and structure of the petitioner's business. Counsel also submits one new piece of evidence – an organizational chart for the petitioner. In addition, counsel argues that the evidence of record establishes that the proffered position qualifies as a specialty occupation under all four alternative criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s Occupational Outlook Handbook (*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 DOL Handbook describes the occupation of accounting in the following general language:

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. According to the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant appears closest to the proffered position in this case:

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.

Id. at 68-69. Most accounting positions, the *Handbook* states, require at least a bachelor's degree in accounting or a related field. *See id.* at 70.

The AAO is persuaded by the evidence of record that the petitioner will employ the beneficiary as an accountant. The petitioner's comparative financial statements for 2001 and 2002, conducted by independent auditors, record gross revenues from its patient services of \$87,256,863 in 2001 and \$111,796,557 in 2002. Salaries, wages, and benefits paid to its employees totaled \$15,648,109 in 2001 and \$16,891,869 in 2002. CIS records indicate that the petitioner currently employs two H-1B accountants. Considering the petitioner's substantial volume of business and the nature of its operations, as detailed in the comparative financial statements, together with the petitioner's description of the proffered position's duties, the AAO concludes that the beneficiary will be performing the services of an accountant. Since the *Handbook* indicates that a bachelor's degree in accounting or a related field is normally required for entry into an accounting position, the AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 diploma and transcripts showing that she earned a bachelor of science in commerce, with a major in accounting, at San Nicolas College in Surigao City, the Philippines, in March 1988. The record also includes a letter from the executive director of an education evaluation service in Los Alamitos, California, stating that the beneficiary's degree is equivalent to a bachelor of science with dual majors in accounting and business administration from an accredited U.S. college or university. Based on the foregoing evidence the AAO determines that the beneficiary is qualified, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), to perform the services of the pertinent specialty occupation, as an accountant.

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.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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