

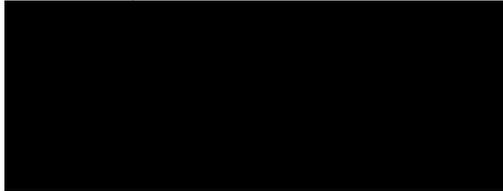


U.S. Citizenship
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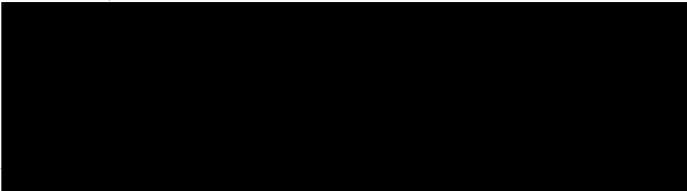
FILE: WAC 03 030 51073 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 2005

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 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 wholesale distributor of textiles and textile products. 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 requests for additional evidence; (3) the petitioner's response to the director's requests; (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 requests for evidence. According to this evidence the beneficiary would:

- Prepare quarterly and annual tax reports, payroll statements and deductions, monthly profit and loss statements and other financial reports;
- Direct the implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments and general ledgers;
- Set up a computerized accounting system that will retain all of the information necessary to prepare scheduled, periodic, quarterly and annual reports, such as tax information, payroll statements and deductions, monthly profit and loss statements and other financial statements;
- Prepare balance sheets reflecting company assets, liabilities and capital;
- Perform audits and prepare corresponding reports;
- Inspect the company's accounting systems to determine their efficiency and protective value and prepare reports of findings and recommendations for superiors and management; and
- Provide tax planning advice.

The petitioner requires a minimum of a bachelor's degree in accounting or a related field 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 indicated on the Form I-129 that its gross annual income was approximately \$7,000,000 with 15 employees. That statement was confirmed by the petitioner's counsel in its letter of January 10, 2003. In response to a second request for evidence from the director, the petitioner submitted a copy of its 2003 federal income tax return dated February 23, 2004, indicating that its gross sales or receipts were only \$3,675,094. A copy of the petitioner's California corporate income tax return for 2002 indicates that the petitioner had gross receipts or sales of \$2,213,430, and \$298,702 paid in salaries and wages. The record does not contain any explanation for the discrepancy in reported income by counsel in its letter of January 10, 2003, and that noted on the submitted income tax returns. Further, counsel states in its letter of January 10, 2003 that hundreds of financial transactions are handled by the petitioner on a daily basis, but the record does not confirm this statement.

A close review of the record, however, establishes that the nature of the petitioner's business and the scope of its operations are sufficient to justify the employment of an accountant who would perform the duties detailed by the petitioner in the operation of the petitioner's business. Those duties include the preparation and analysis of monthly financial statements (balance sheets, income and cash flow statements), which are relied upon by management in the operation of the petitioner's business, and the petitioner's outside accounting firm for the purpose of preparing corporate tax returns. The beneficiary will also prepare audits of company operations and submit reports for use by management in making business decisions. The nature and scope of the petitioner's business, and the duties detailed for the position relative thereto, establish that 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 final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not comment on this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. A credentials evaluation service has determined that the petitioner's foreign education is equivalent to a bachelor's degree in business administration with a specialization in accounting from an accredited college or university in the United States. The beneficiary is, therefore, qualified to perform the duties of the proffered position.

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.

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