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FILE: WAC 03 016 53030 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 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:  
[Redacted]

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 was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer and fabricator of finished stone products with approximately 35 employees that seeks to employ the beneficiary as a part-time 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 petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief.

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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (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 support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: budget planning; cost accounting; financial analysis; preparing required management and government reports; applying principles of accounting to analyze financial information and prepare financial reports; performing compilation and analysis of financial information and preparing financial reports; compilation and analysis of financial information to prepare entries to accounts, such as general ledger accounts; documentation of business transactions; performing analysis of financial information detailing assets, liabilities, and capital; preparing balances sheets, profit and loss statements and other reports to summarize current and projected company financial positions; auditing contracts, orders and vouchers and preparing reports to substantiate individual transactions prior to settlement; establishing, modifying, documenting and coordinating implementation of accounting and accounting control procedures. The petitioner provided a breakdown of tasks indicating that record-keeping and analytical tasks will be completed on a daily basis; quarterly and yearly reports are completed over a period of thirty days for quarterly reports, and sixty days for yearly reports; record keeping of expenses, disbursements, inventory and general ledgers are completed weekly and require four to six hours of attention each week. Accounts receivables require four to eight hours each week; the petitioner indicated that the position requires twenty-five hours per week. The petitioner indicated that the position requires a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position described by the petitioner appear to reflect some of those performed by accountants. However, the director found that many of the listed duties were those of a bookkeeper. Additionally, the director concluded that the petitioner's business would not utilize the beneficiary solely in the capacity of an accountant or auditor exclusively in the review, analysis, and reporting of the petitioner's accounting records. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel differentiates between the duties of the proffered position and those of a bookkeeper. Counsel explains that the beneficiary will devote only a minimal amount of time to record keeping and account receivables. Counsel contends that the multiplicity of financial transactions demands that the petitioner hire a part-time accountant to assist the chief financial officer in managing and overseeing the business operation which has grossed over \$2.4 million.

The AAO agrees that the record establishes that the proffered part-time position is an accountant, and is a specialty occupation.

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 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.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary has the equivalent of a bachelor's degree in accounting from a U.S. institution based on an educational evaluation, indicating that she is qualified for this specialty occupation.

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.