

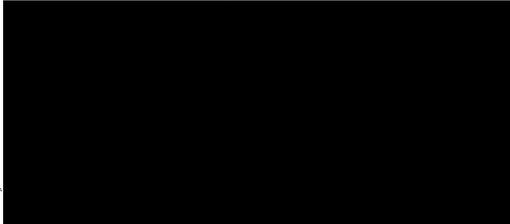
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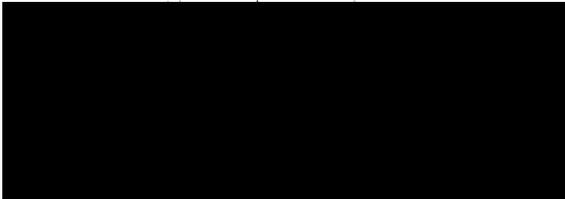
FILE: WAC 04 091 51334 Office: CALIFORNIA SERVICE CENTER Date: OCT 28 2005

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, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 manufacturer of men's clothing and a fashion designer. It seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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; and (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 Form I-129; the attachments accompanying the Form I-129; 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 analyzing and recording daily financial transactions; preparing financial statements such as the balance sheet and the income and cash flow statements; preparing and filing tax returns and reports with the federal and state reporting agencies; assisting management in preparing monthly, quarterly, and annual budgets and reports; participating in strategic planning and business discussions to determine critical financial concerns such as pricing, profit margin, dividend distributions, and similar issues; performing financial analysis and interpreting financial information to enable management to make sound business decisions that would maximize profitability and enhance shareholder value; and assist management in developing an internal audit program that would help assure the integrity of financial systems. For the proposed position the petitioner requires a bachelor's degree in accounting and work experience.

The director stated that the beneficiary will a significant period of time performing the duties of bookkeeping, accounting, and auditing clerks as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*); that the *Handbook* conveys that such occupations do not require a bachelor's degree in a specific specialty; and that the proposed position was not analogous to a management accountant as that occupation is described in the *Handbook* as the beneficiary will not plan, budget, or prepare detailed financial reports for outside agencies or corporate stockholders. The director found that the submitted organizational chart did not reflect a bookkeeper position; thus, the beneficiary would perform such duties. The director stated that some of the proposed duties do not have the complexity or scope of responsibility normally required of an accountant; that the proposed position does not require the theoretical and practical application of a body of highly specialized knowledge; and that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director discussed the relevancy of *Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000) with the facts in the immediate petition.

On appeal, counsel states that the petitioner established that the proposed position corresponds to an accountant as that occupation is depicted in the *Handbook*, and that the *Handbook* reveals that an accountant requires a bachelor's degree in a specific specialty. Counsel states that the duties of bookkeepers, accounting, and auditing clerks are clerical in nature, and counsel discusses the distinction between a bookkeeper and an accountant as described in the book *Intermediate Accounting*. Counsel asserts that *Intermediate Accounting* reveals that bookkeeping and recordkeeping are encompassed within an accountant's duties; counsel states that the Act and regulations do not require that every duty have the complexity or scope of responsibility of a specialty occupation. According to counsel, the director did not carefully consider the petitioner's statement that the beneficiary will plan, budget, or prepare detailed financial reports for outside agencies or corporate shareholders. Counsel describes the proposed duties and the college coursework relating to each duty. Counsel states that the proposed position is newly created.

Upon review of the record, the petitioner has established the first criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) the petitioner must show that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. As described by the petitioner, and supported by the evidence in the record of income tax returns, the proposed position requires a baccalaureate degree

The AAO notes that the beneficiary is qualified for the proposed position. Contained in the record is an educational evaluation from Educational Evaluators International, Inc. that states that the beneficiary's baccalaureate degree in commerce (with a major in accounting) is the educational equivalent to a bachelor of science with dual majors in accounting and business administration awarded by regionally accredited colleges and universities in the United States.

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.