

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2

FILE: WAC 03 090 50031 Office: CALIFORNIA SERVICE CENTER Date OCT 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 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 an entrepreneurial company engaged in multiple lines of business. 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 proffered position does not qualify as 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.

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 Form I-129 and an accompanying letter the petitioner described itself as an entrepreneurial company engaged in multiple business activities involving the development and management of real estate assets. Since its establishment in 1989, the petitioner explains, it has partnered with two other companies in real property investments, including a partnership with [REDACTED] Ltd. that owns a 456-acre pistachio orchard in which the petitioner manages the farming operation, quality control, and accounting. Since 1994, the petitioner states, it has been increasingly involved in market research and development activities associated with the formation of agricultural and real estate development partnerships. During the 1990s the petitioner states that it also had business activities in other markets such as sports products and medical products. According to the petitioner, it is constantly receiving new business proposals, which lead to new accounts requiring the services of a part-time (20 hours/week) in-house accountant. The beneficiary is qualified for the proffered position, the petitioner states, by virtue of her bachelor of science in business administration, with a major in accounting, and nearly twenty years of experience in accounting and finance in the Philippines.

In response to the RFE the petitioner listed the position's duties and responsibilities of the proffered position as follows:

- Directs the financial affairs of the company and prepares financial analyses of operations, including interim and final financial statements with supporting schedules, for the guidance of management.
- Assists the President in the formulation of financial plans, goals and policies and gives advice on short-term and long-term financial objectives and actions.
- Maintains the company's system of accounts and keeps books and records on all company transactions and assets.
- Develops, analyzes and interprets statistical and accounting information in order to appraise operating results in terms of profitability, performance against budget and other matters bearing on the fiscal soundness and operating effectiveness of the company.
- Assists the President in establishing major economic objectives and policies for the company and prepares reports that outline the company's financial position in the areas of income, expenses and earnings based on past, present and future operations.
- Develops budgets and prepares periodic reports that compare budgeted costs to actual costs. Analyzes and reports variances for the purpose of giving advice to the President.
- Assembles spreadsheets and draw charts and graphs to be used by the President to illustrate technical reports to interested clients and/or investors.
- Responsible for tax planning and compliance with all federal, state and local corporate, payroll and other applicable taxes.
- Assists the President in the preparation of project feasibility studies, particularly in the area of financial projections.
- Analyzes financial information to produce forecasts of business, industry and economic conditions for use by the President in making investment decisions.
- Analyzes business operations, trends, costs, revenues, and financial obligations in order to make recommendations to the President regarding tax strategies as well as the advantages and disadvantages of certain business decisions and transactions.
- Responsible for all financial procedures and records, including (a) maintenance of checking accounts and invoices, (b) subsidiary ledgers, cash disbursements, cash receipts, accounts

payable, payroll summary, accounts receivable, and journal entries for adjustments to the general ledger, (c) current and capital fund general ledgers, trial balances, financial reports and balance sheets, and (d) preparing monthly reports that include bank reconciliations and cash flow reports.

- Monitors and controls the flow of cash receipts and disbursements to meet the business and investment needs of the firm; evaluates the need for procurement of funds and makes appropriate recommendations to the President.
- Develops and maintains relationships with banking, insurance, lending institutions and the financial community in general to facilitate the company's financial activities.
- Responsible for formulating and implementing a more systematic and smooth financial delivery system for the company.
- Performs other administrative functions as may be assigned by the President.

With its response to the RFE the petitioner submitted substantial additional documentation addressing the director's various evidentiary requests. The materials included, among other items, a company profile, some photographs of the petitioner's business offices and agricultural projects, its office lease, business licenses, federal and state corporate income tax filings for 2002, an organizational chart, documents relating to a new business venture with [REDACTED] LLC, evidence of its previous use of accountant services, and documentation of the beneficiary's educational background.

In his decision the director found that while some of the duties of the proffered position involve accounting tasks, a significant amount of the beneficiary's time would be spent performing the duties of a bookkeeping, accounting, or auditing clerk, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, positions which do not require a baccalaureate or higher degree. In the director's view, there were two reasons the proffered position could not be classified as an accountant position. The first was that the petitioner does not have the organizational complexity to warrant an accountant, particularly considering the fact that its organizational chart listed no bookkeeping, accounting, or auditing clerk currently employed by the company. The director concluded that duties normally performed by accounting, bookkeeping, and auditing clerks "would clearly be a part of the duties of the position offered" and that any duties normally performed by an accountant "would only be incidental to the primary duties." The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engaged in the type of business for which an accountant would typically be required for any significant length of time. In particular, the petitioner's business operations were not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting functions. The director concluded that the record failed to establish that the duties of the proffered position could not be performed by an experienced individual with a less than baccalaureate level of educational training. The director also determined that the petitioner failed to show that it had previously required a baccalaureate or higher degree in a specific specialty for the position, that such a degree or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, or that the duties of the position are so specialized and complex that they require baccalaureate or higher level knowledge to perform them. Accordingly, the director held that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the director erred in finding that the duties of the proffered position are primarily those of a bookkeeping, accounting, and auditing clerk, rather than those of an accountant.

With regard to the issue of who performs the company's bookkeeping functions, the petitioner's president, [REDACTED] states that his wife, [REDACTED] has performed such functions since 1996, and adds that she does not have the requisite knowledge to perform the more complex duties of an accountant. According to Mr. [REDACTED] his wife is not on the company's payroll but derives a benefit from her work through the profits earned by her husband. [REDACTED] has submitted a letter in support of the appeal confirming that she is the wife of Mr. [REDACTED] that she has worked as the petitioner's bookkeeper since October 1996, that she is not a salaried employee but benefits from the profits earned by her husband, and that she is reimbursed for any expenses she incurs. Ms. [REDACTED] lists her bookkeeping duties as follows:

- Maintain checking accounts and prepare checks for invoices.
- Calculate, prepare, and issue bills, invoices, account statements, and other financial statements.
- Prepare and maintain subsidiary ledgers, cash disbursements, cash receipts, accounts payable, payroll summary, accounts receivable, and journal entries for adjustments to the general ledger.
- Prepare and maintain current and capital fund general ledgers, trial balances, financial reports and balance sheets.
- Prepare monthly reports that include bank reconciliation and cash flow reports.

The petitioner's president asserts that the evidence of record establishes its past practice of hiring individuals with baccalaureate degrees in accounting for the proffered position. The AAO notes that documentation previously submitted by the petitioner includes evidence that the petitioner utilized the services of an accountant, [REDACTED] from June through September 2002 (the petitioner asserts that Mr. [REDACTED] services lasted until November 2002) – *i.e.*, shortly before the instant petition was filed in January 2003. The resume faxed to the petitioner in June 2002 by AppleOne Employment Services indicates that Mr. [REDACTED] had fourteen years of professional experience in accounting and a bachelor of science degree in business administration – accounting from California State University in Carson, California. The record shows that the petitioner paid the employment service (and later [REDACTED]) for Mr. [REDACTED] services, so he was not a salaried employee. The AAO notes that the petitioner's federal tax return for 2002 lists accounting expenses of \$10,463. (The petitioner indicates in Form I-129 that it intends to pay the beneficiary \$17.62/hour for twenty hours of work a week, which extrapolates to approximately \$18,325/year.)

The petitioner's president also reiterates his contention that the petitioner is engaged in numerous business ventures involving agricultural and other real estate assets, pointing to previously submitted evidence of two of its current projects with [REDACTED] Ltd. and [REDACTED] LLC. The petitioner states that it utilizes the services of numerous individuals employed by its business partners, who do not, therefore, appear on the petitioner's payroll. The scale of its business operations, the petitioner asserts, requires the services of a full-fledged accountant.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *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 AAO determines that the duties of the proffered position accord with the *Handbook’s* description of a management accountant. That description reads, in pertinent part, as follows:

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.

Handbook, 2004-05 edition, at pages 68-69. Based on the entire record – including documentation of the petitioner’s business ventures, the detailed company profile, the particular accounting duties described in the proffered position, and documentation of the petitioner’s previous utilization of an accountant with a baccalaureate degree in accounting – the AAO determines that the beneficiary will be performing the services of an accountant in the proffered position.

The *Handbook* states that most accountant positions require at least a bachelor’s degree in accounting or a related field. See *id.* at 70. The AAO concludes 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 shows that the beneficiary earned a bachelor of science in business administration with a major in accounting at the University of the East in Manila, the Philippines in March 1991. According to a report from an educational credentials evaluation service in California, the beneficiary's degree is equivalent to a bachelor of science in business administration with a concentration in accounting from an accredited U.S. college or university. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform the services of the pertinent specialty occupation – an accountant – in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.

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