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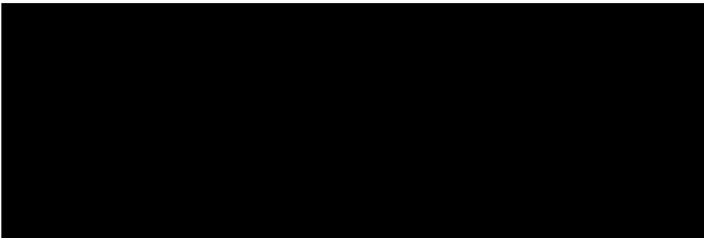
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FILE: WAC 04 128 53847 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2005

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:



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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a community social services provider 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 and additional evidence.

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 March 30, 2004 letter in support of the petition; 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: (1) performing data-entry of cash receipts and accounts payable into computerized accounting program; processing of Agency payments to vendors; maintaining cash receipts, cash disbursements, accounts payables, accounts receivables, and general ledger (30% of time); (2) developing and maintaining depreciation schedules and cost allocation plans; preparing cash reports, A/P, A/R schedules for review with executive director; preparing documents and schedules for independent and other funding sources audits; preparing financial status reports and federal cash transaction report to Federal government on quarterly and semi-annual basis; preparing invoices and financial reports to funding sources on monthly, quarterly and annual basis; reviewing semi-monthly payroll processing by ADP and quarterly reports; meeting with financing committee of Board of Directors (50% of time); (3) conducting audits of sub-contractors for government funded programs and prepare the related reports; perform cash flow analysis; and performing additional duties as assigned by executive director (20% of time). The petitioner indicated that it required a bachelor's degree or higher in accounting or a related field.

The petitioner was established in 1942 and has approximately 25 employees. The petitioner submitted its Form 990 Federal Return of Organization Exempt from Income Tax for 2002 which indicated a total revenue of \$1,207,141. The petitioner indicated that over 6,400 individuals receive services annually. The petitioner explained that it is involved with collaborations of non-profit and public agencies.

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. Additionally, the director noted that some of the beneficiary's duties would include preparing the petitioner's business correspondence and billing statements. The director noted that the petitioner did not employ any bookkeepers, and/or accounting or auditing clerks and that some of the listed duties are bookkeeping duties. The director noted that according to the organizational chart, the accountant position is in the same line as those who are not considered specialty occupations. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel states that an accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. On appeal, counsel refers to the previously submitted opinion letter and asserted that the director did not consider this evidence when reviewing the record. Counsel contends that because the director considered irrelevant factors such as the vertical alignment of the position on the organizational chart and the proximity of the position to non-professional positions on the chart, CIS abused its discretion. On appeal, the petitioner submits a letter from a certified public accounting and consulting firm. The managing partner of this firm stated that the proffered position is more than a bookkeeper; the functions required are closer to those of a controller. The accounting firm indicated that to properly satisfy the requirements of the position, the petitioner requires someone with a minimum of a bachelor's degree in accounting. The firm stated that the petitioner has previously used under-qualified

personnel which resulted in them paying outside accountants to correct its records and caused a failure of filing timely financial reports. Additionally, the petitioner explains that sixty percent of its budget consists of local, state, county and federal funds, which all require separate general ledgers and bank accounts including cost accounting and cost allocation plans. The petitioner states that it requires frequent audits from outside funding sources. The petitioner states that the incumbent in the proffered position provides reports to all directors of the separate programs, interfaces with funding sources and conducts audits to review all program subcontractors.

The AAO agrees that the record establishes that the proffered 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)(4).

The second issue in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

The *Handbook* states the following about training and educational requirements for accountants and auditors:

Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Beginning accounting and auditing positions in the Federal Government, for example, usually require 4 years of college (including 24 semester hours in accounting or auditing) or an equivalent combination of education and experience. Some employers prefer

applicants with a master's degree in accounting, or with a master's degree in business administration with a concentration in accounting.

The petitioner submitted a copy of the beneficiary's Master of Business Administration degree obtained from a United States university. The petitioner submitted unofficial transcripts that did not contain identifying information such as the beneficiary's name or the name of the university. Therefore, the record is insufficient to establish that the beneficiary has at least a bachelor's degree in accounting or a master's of business administration degree with a concentration in accounting.

Upon review of the record, there is insufficient evidence in the record to determine that the beneficiary is qualified to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's May 7, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.