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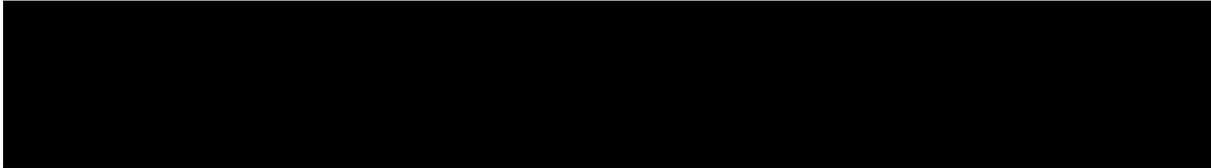
U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
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FILE: WAC 04 234 52462 Office: CALIFORNIA SERVICE CENTER Date: **AUG 15 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 a skilled nursing facility. It seeks to employ the beneficiary as an auditor and to classify him 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 petitioner had submitted conflicting information as to its number of employees which undermined the credibility of the entire record.

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, a letter from counsel, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as the corporate office of a chain of skilled nursing facilities. The petitioner stated that its business was

established in 1989, had 2,200 employees and a gross annual income of \$85 million, and proposed to hire the beneficiary for three years as a part-time auditor, 25 hours/week, at a wage rate of \$17.50/hour. The duties of the job were described as follows:

- Conducts audits for management to assess effectiveness of controls, accuracy of financial records, and efficiency of operations: Examines records of departments and interviews workers to ensure recording of transactions and compliance with applicable laws and regulations.
- Inspects accounting systems to determine their efficiency and protective value. Reviews records pertaining to material assets, such as equipment and buildings, and staff to determine degree to which they are utilized.
- Analyzes data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud or lack of compliance with laws, government regulations, and management policies or procedures. Prepares reports of findings and recommendations for management.
- Conducts special studies for management, such as those required to discover mechanics of detected fraud and to develop controls for fraud prevention. Audit employer business records for governmental agency to determine unemployment insurance premiums, liabilities, and employer compliance with state tax laws.
- Audits financial records to determine tax liability. Reviews information gathered from taxpayer, such as material assets, income, surpluses, liabilities, and expenditures to verify net worth or reported financial status and identify potential tax issues.
- Analyzes financial issues to determine nature, scope, and direction of investigation required. Develops and evaluates evidence of taxpayer finances to determine tax liability, using knowledge of interest and discount, amenities, valuation of stocks and bonds, sinking funds, and amortization valuation of depletable assets.

The minimum educational requirement for the position, according to the petitioner, is a bachelor's degree in accounting. The beneficiary is qualified for the job, the petitioner declares, by virtue of his bachelor of science degree in accountancy from the University of the East in Manila, the Philippines, which he earned in April 1996.

In response to the RFE the petitioner provided additional documentation – including an evaluation of the U.S. equivalency of the beneficiary's foreign educational degree, quarterly wage and withholding reports (Form DE-6) filed with the State of California for the first three quarters of 2004, an organizational chart, the petitioner's business license, a list of employees who work in the corporate office, and photographs of the business premises.

In his decision the director noted that the petitioner's Form DE-6 filings showed only "51 employees," whereas the petition stated that current employees totaled 2,200, and found that the petitioner's statements with regard to its number of employees "were not true and correct." Based on this conflicting information the director concluded that the entire record lacked credibility and denied the petition for failure to establish that the petitioner would employ the beneficiary in the proffered position in accordance with the terms described in the petition.

On appeal counsel asserts that the director erred in finding that the petitioner had misrepresented the number of employees on its Form DE-6. Counsel explains that the previously submitted Forms DE-6 listed only the employees at the petitioner's corporate headquarters, where the beneficiary would work. They did not list the

employees at the petitioner's numerous nursing facilities. In support of the appeal counsel submits the petitioner's quarterly wage and withholding reports for all of its employees for the last three quarters of 2004. Counsel states that the petitioner had around 4,000 employees on its payroll at the end of 2004/ beginning of 2005. Counsel submits a directory of 34 health care facilities, as well as corporate headquarters and a billings and collection office, under the petitioner's corporate mantle – which includes their addresses, telephone and fax numbers, total beds, and employee totals. According to the directory, the petitioner has a total of 4,813 beds and 4,211 employees, including a corporate staff of 57. Counsel also submits an excerpt from the San Fernando Valley Business Journal which lists the petitioner's revenue and employee totals for the three years 1999 to 2001 as follows: Year 1999 – revenues \$45.8 million / employees 4,500; Year 2000 – revenues \$150.0 million / employees 2,000; Year 2001 – revenues \$103.3 million / employees 4,500.

Upon review of the entire record, the AAO is persuaded that the director erroneously interpreted the information contained in the original DE-Forms as applying to the petitioner's entire business operation, rather than its headquarters only. The AAO concludes that the petitioner has not misrepresented the number of its employees and that the director erred in denying the petition based on the petitioner's overall lack of credibility. The director's decision must therefore be withdrawn. Based on all the evidence of record, including the materials submitted on appeal, the AAO will consider whether the proffered position is a specialty occupation and whether the beneficiary is qualified to perform services in a specialty occupation.

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 general description of the accounting occupation in the *Handbook*, 2006-07 edition, at 70:

Accountants and auditors help to ensure that the Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services, including public, management, and government accounting, as well as internal auditing, to their clients. Beyond carrying out the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services.

As further explained in the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which internal auditor best describes the proffered position in this petition. The *Handbook's* entry reads, in pertinent part, as follows:

Internal auditors verify the accuracy of their organization's internal records and check for mismanagement, waste, or fraud Internal auditors examine and evaluate their firms' financial and information systems, management procedures, and internal controls to ensure that records are accurate and controls are adequate to protect against fraud and waste. They also review company operations, evaluating their efficiency, effectiveness, and compliance with corporate policies and procedures, laws, and government regulations

Id. at 70-71. Based on the evidence of record, including the petitioner's description of the proffered position's duties and the nature and scale of the petitioner's business operations, the AAO is persuaded that the proffered position is that of an internal auditor performing at a baccalaureate level of auditing. Accordingly, the AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 evidence of record, which includes copies of the beneficiary's academic transcript and degree, shows that the beneficiary earned a bachelor of science in accountancy from the University of the East in Manila, the Philippines on April 25, 1996. According to the report of a foreign education evaluation service in New York City, the beneficiary's education is equivalent to a bachelor of arts degree in accounting from an accredited U.S. college or university. Based on the foregoing documentation the AAO determines that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) to perform the services of the pertinent specialty occupation – an auditor.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

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