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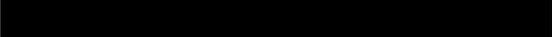
U.S. Citizenship  
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Services

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FILE: WAC 05 155 51355 Office: CALIFORNIA SERVICE CENTER Date: **AUG 29 2006**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California 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 owns and operates the Santa Cruz boardwalk and other tourist attractions, with 500 off-season employees. It seeks to hire the beneficiary as a full-time accountant. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a part-time accountant. Evidence of the beneficiary’s duties includes: the Form I-129; a May 10, 2005 letter of support from the petitioner; and counsel’s May 19, 2005 response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary will be spending 100% of his time applying principles of accounting in analyzing financial information and preparing financial reports; compiling and analyzing financial information to prepare entries to accounts such as general ledger accounts; documenting business transactions; analyzing financial information detailing assets, liabilities and capital; preparing balance sheets, profit and loss statements and other reports to summarize current and projected company financial position; auditing contracts, orders and vouchers and preparing reports to substantiate individual transactions prior to settlement; generating and auditing reports; reconciling bank statements and banking entries; performing inventory control; supervising staff members; reporting to the Corporate Controller on a daily basis and researching data as requested by the Vice President and company director.

Additionally, the petitioner noted that working as an accountant in the amusement park industry requires additional knowledge that is not found in other services or retail businesses. The petitioner noted that the boardwalk division has taxes in areas such as: parking tax, admission tax, and sales tax. The petitioner stated that the beneficiary would be responsible for auditing all three tax areas and that all revenue must first be recorded as taxable/nontaxable and fulfill specific requirements set forth by the local city council. The petitioner submitted a separate organizational chart for the accounting department.

In his denial, the director found that the proposed duties appear to be the duties normally required of an accounting clerk. The director noted that the petitioner employed a controller, a senior accountant and a part-time accountant. The director noted that the senior accountant position had four positions listed underneath it, namely: accounts payable supervisor, accounts payable assistant, accounts receivables and a revenue auditor.

On appeal, counsel emphasizes that the petitioner operates several tourist attractions, has an annual gross income of \$30 million with over 500 off-season employees and more than 1,000 in-season employees. Counsel explains that the beneficiary will not perform clerical and administrative duties. Counsel notes that

there are four employees assigned to perform such accounting related clerical and administrative duties. Counsel notes that the request for additional evidence requested the percentage of time to be spent on each duty and the petitioner noted that the duties of an accountant are seamless and stated that the beneficiary would spend 100% of the time on accounting duties. On appeal, the petitioner provides a detailed breakdown of duties. Counsel provides a further explanation regarding the company's organization chart and notes that the senior accountant has that title due to seniority with the company. Counsel contends that the director misunderstood the organizational chart and notes that the senior accountant does not have four individuals working below him. Counsel explains that the beneficiary will spend 40% of his time on the implementation of accounting and inventory methods. Counsel states that the petitioner's inventory averages \$500,000 per month and that the beneficiary will implement a new method using either the FIFO or LIFO method. Counsel notes that the beneficiary will implement a software program that will be used for all departments to establish a company-wide consistency. Counsel notes that the beneficiary would perform a continuous internal audit and oversee inventory checks at several locations per month.

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 first 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*, 712 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 most positions for an accountant require a bachelor's degree in accounting or a related field.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The record reflects that the beneficiary has the equivalent of a Bachelor of Science in Accounting awarded by a regionally accredited college and university in the United States, indicating that he 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.