

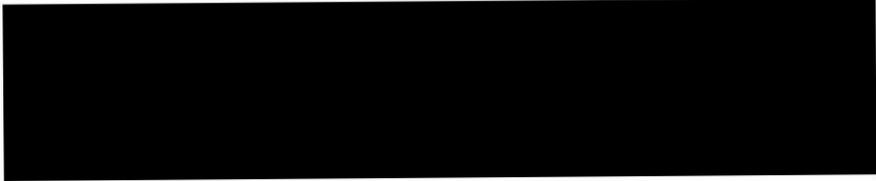


U.S. Citizenship  
and Immigration  
Services

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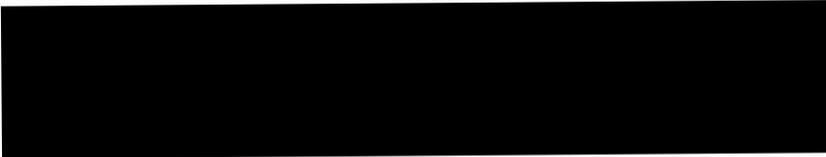
FILE: WAC 04 169 51060 Office: CALIFORNIA SERVICE CENTER Date: **APR 05 2006**

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.

for *Michael T. Kelly*  
Robert P. Wiemann, Director  
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 is a skilled nursing facility, with 80 employees and annual gross revenues of over \$7 million.<sup>1</sup> It seeks to employ the beneficiary as a financial manager 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 he determined that the record did not establish the proffered position as 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; (4) the director's denial; and (5) Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before issuing 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, the 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 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.

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

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<sup>1</sup> In response to the director's request for evidence, counsel submitted copies of the petitioner's 2002 and 2003 tax returns.

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 seeks the beneficiary’s services as a financial manager. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s April 19, 2004 letter of support; and counsel’s October 13, 2004 response to the director’s request for evidence. As described by counsel, the beneficiary would plan and direct the petitioner’s financial activities, requiring him to:

- Analyze financial statements, annual reports and other financial data, reviewing the petitioner’s annual reports, monthly financial statements, trial balance sheets and general ledger accounts; and recommending the allocation of the petitioner’s financial resources;
- Maintain and analyze financial information from all of the petitioner’s components and develop integrated revenue/expense analyses, including projected future earnings;
- Determine the feasibility of potential business ventures by performing revenue and expense projections; determining cash flow, liquidity ratios and the financial picture; and recommending investment decisions;
- Control expenditures on advertising, marketing, staffing, and equipment, requiring the formulation of policies to allocate financial resources and the taking of corrective action when expenditures exceed allocations;
- Provide operational analysis and profitability improvement analysis, reviewing management practices; and
- Prepare the financial and regulatory reports required by law, auditors, regulatory agencies and management.

To make its determination whether the employment just described qualifies as 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In his denial, the director found the proffered position to reflect the employment of financial analysts. The AAO does not agree. Instead, it finds the duties of the proffered employment to be closely aligned with those of financial managers or accountants, as described in the 2006-2007 edition of the *Handbook*.<sup>2</sup> In that the petitioner's description of the proffered position indicates that the beneficiary would actually perform the financial analyses and draft the reports required by the petitioner, rather than oversee or direct such activities, the AAO concludes that the proffered position most closely resembles that of a management accountant.

As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management . . . . They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting.<sup>3</sup>

In that the *Handbook* indicates that most individuals seeking employment as management accountants are required to hold at least a bachelor's degree in accounting or a related field, the petitioner has established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to the record before it to determine whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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<sup>2</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos010.htm](http://www.bls.gov/oco/ocos010.htm) and [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm)

<sup>3</sup> *Ibid.*, at [www.bls.gov/oco/ocos001.htm](http://www.bls.gov/oco/ocos001.htm).

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in a field of study directly related to accounting, as required to satisfy the second of the criteria noted above. This evidence included copies of the beneficiary's diploma from the Ateneo de Davao University in The Philippines documenting his 1998 bachelor of science degree in commerce; his academic transcripts, which indicate that his undergraduate major was in accounting; and an evaluation of the beneficiary's educational credentials from Academic and Professional International Evaluations (APIE), Inc. in Los Alamitos, California. The APIE evaluation finds the coursework taken by the beneficiary to provide him with the equivalent of a U.S. baccalaureate degree in business administration with a concentration in management accounting from a regionally accredited college or university.

Having reviewed the documentation provided by the petitioner, the AAO finds the beneficiary's academic transcripts to support the APIE evaluation. Accordingly, it finds the beneficiary to hold a foreign degree that is equivalent to a U.S. baccalaureate degree required by the proffered position, i.e., a degree in business administration, with a major in accounting. Therefore, the petitioner has established the beneficiary as qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons previously discussed, the petitioner has established both that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the petitioner's appeal is sustained.

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 met that burden.

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