



U.S. Citizenship
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Services

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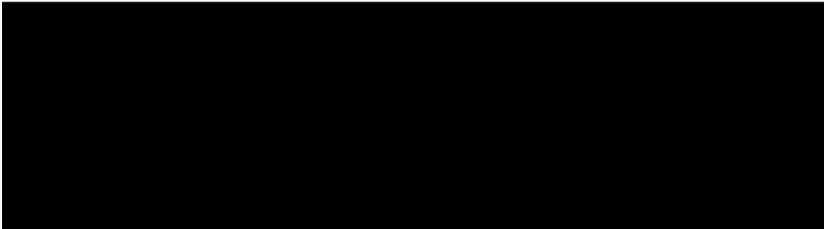
FILE: WAC 04 032 52766 Office: CALIFORNIA SERVICE CENTER Date: **APR 12 2006**

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, 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 appeal will be sustained. The petition will be approved.

The petitioner is a manufacturing company that seeks to employ the beneficiary as an accountant. The petitioner, therefore, 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 finding that the proffered position is not a specialty occupation, and that the beneficiary is not qualified for a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address whether the proposed position qualifies 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.

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; and (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 Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing financial information and preparing financial reports to determine assets, liabilities, profit and loss, and tax liability; analyzing operations, trends, costs, revenues, and financial commitments and obligations to project future revenues and expenses; developing, maintaining, and analyzing budgets and preparing reports comparing budgeted costs to actual costs; preparing the balance sheet, profit and loss statement, and amortization and depreciation schedules; reporting finances to management and advising them about resource utilization, tax strategies, and assumptions underlying budget forecasts; computing taxes; auditing contracts and preparing reports that substantiate transactions; providing cost and variance analysis and budgeting; determining the cost of business activities, providing price and profitability reports and analyzing changes in production and services to determine the impact on cost; providing inventory analysis for excess and obsolete, standard costing, and development of BOM and routing cost analysis; preparing and filing federal, state, local, and corporate returns; providing internal accounting; providing budgeting and preparing corporate financial statements using Oracle Financials and Access; generating monthly invoices using MS Excel and determining legitimate costs; valuing assets, assessing risk, forecasting and projecting financials, and providing auditing compliance. For the proposed position, the petitioner requires a bachelor's degree and passage of the Uniform Certified Public Accountant Examination.

The director stated that the proposed duties reflect those of an accountant as that occupation is described in the *Handbook*; but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* and the *Dictionary of Occupational Titles (DOT)* is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation. The director found that the petitioner does not employ financial clerks, positions that are non-specialty occupations, and that although the proposed position requires some financial analysis, the actual duties to be performed by the beneficiary are more closely related to those of financial clerks. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity, scale of business, or type of business to require the services of a part or full-time accountant. According to the director, the beneficiary would not be used exclusively to review, analyze, and report on accounting records, which are the duties of an accountant. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found the beneficiary unqualified for an accountant position.

On appeal, counsel states that CIS previously approved similar H-1B petitions filed by employers on behalf of the beneficiary. Counsel contends that the position offered here is a specialty occupation. Counsel cites to *Young China Daily v. Chappell*, 742 F. Supp. 552 (N.D. Cal., 1989) to show that the size of an operation is irrelevant in determining whether a position is a specialty occupation. Counsel states that the petitioner has 19 employees and had gross earnings of over \$5 million in 2001, nearly \$8 million in 2002, and \$10 million in 2003. The petitioner requires an accountant, counsel asserts, due to its increase in sales and lack of executive and managerial staff. Counsel maintains that the beneficiary holds the educational equivalent to a bachelor's degree in accounting, thereby qualifying for the proposed position.

The AAO finds that the proposed position qualifies as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires that a petitioner establish that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. With the case here, the submitted income tax records substantiate counsel's assertions regarding the petitioner's income, and the DE-6 Form for the quarter ending March 31, 2004 conveys that the petitioner has 24 employees and paid wages of \$121,071. The organizational chart portrays the petitioner as employing designers, spreaders, sample makers, a pattern maker, and a grader and marker. In the context of this evidence, the petitioner established that the proposed duties would require a baccalaureate degree in accounting. Accordingly, the proposed position qualifies as a specialty occupation.

And now, the AAO will consider the beneficiary's qualifications for the proposed position.

The record contains the following academic documents relating to the beneficiary: a transcript and certificate of graduation regarding the bachelor of engineering degree; an academic record from Korea Accounting and Information School listing the completion of eight accounting courses; a transcript from Palomar College in California showing passage of 19 accounting and business courses; and a letter from the California Board of Accountancy stating that the beneficiary passed all sections of the Uniform Certified Public Accountant Examination.

There are two educational evaluations in the record. The evaluator from Educational Assessment, Inc. states that the beneficiary's academic background is the equivalent of a bachelor of engineering degree in environmental engineering and a baccalaureate degree in accounting from an accredited university in the United States. The evaluator from Morningside Evaluations and Consulting states that the beneficiary holds the equivalent of a bachelor of science degree in engineering with a concentration in accounting from an accredited institution of higher education in the United States. Even though their evaluations are based on the same evidence, the AAO finds that the evaluators reach inconsistent conclusions about the beneficiary's educational equivalency. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Nonetheless, the AAO finds that both evaluators consider the beneficiary as holding a bachelor's degree in engineering, and the AAO notes that the beneficiary's completion of 27 units in business

and accounting courses is a sufficient concentration in the field of accounting. As such, the beneficiary qualifies for the proposed position of accountant.

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.

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