



U.S. Citizenship
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Services

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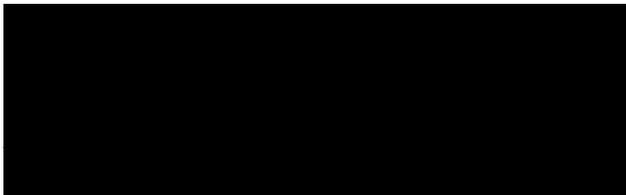


FILE: WAC 04 062 50365 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2006

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:



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 wholesales computer components. It seeks to employ the beneficiary as a part-time accountant/financial analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 a part-time accountant/financial analyst. 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 preparing, examining, and analyzing accounting records, financial statements, and other financial reports to assess accuracy, completeness, and conformance to reporting and procedural standards; analyzing business operations, trends, costs, revenues, financial commitments, and obligations to project future revenues and expenses or to provide advice; documenting accomplishments in dealing with general ledger activities, account analysis, reconciliation, preparation for tax filings, fixed asset reports or other related accounting activities; executing effective financial reporting functions necessary to support management's reporting and analysis requirements; performing all aspects of budget development, cost reporting, and cost analysis; evaluating financial documents to forecast the future economic position and budget requirements relating to income expenses, and earnings based on past, present, and expected operations; reviewing financial reports such as balance sheets and income statement activity and explaining performance and fluctuations; computing taxes and preparing tax returns, ensuring compliance with payment, reporting, and other tax requirements; developing, implementing, modifying, and documenting recordkeeping and accounting systems, using current computer technology; recommending financial policies and programs to management. For the proposed position, the petitioner requires a bachelor's degree, or its equivalent, in computer science, business administration, computer applications, or management information systems.

The director stated that the proposed position resembles a bookkeeper as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the petitioner's income statement for the month ending December 2003 reflects that in the month of December 2003 it had over \$20 million in sales, and for the 2003 tax year had sales of almost \$139 million. Counsel refers to DE-6 Forms and Form 941 submitted into the record to show the petitioner has 171 employees and an organizational chart to demonstrate the petitioner's hierarchy of business operations. Counsel states that the petitioner already employs an accountant to handle the headquarters' transactions; and that the beneficiary will handle three branch offices and the Taiwan office offsite, along with financial analysis responsibilities. Counsel maintains that a financial clerk does not have the knowledge to perform the proposed duties.

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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually

associated with the attainment of a baccalaureate or higher degree. The petitioner wholesales computer components. It has 171 employees, almost \$139 million in revenue annually, and generates about \$20 million each month. As described by the petitioner's December 18, 2003 letter, and based on the evidence in the record such as tax records from ADP, a statement of income, an organizational chart, and company catalogs, the proposed position is specialized and complex, requiring a baccalaureate degree in accounting. The petitioner, therefore, satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now address whether the beneficiary is qualified for the proposed position.

The evidence in the record reflects that the beneficiary possesses a baccalaureate degree in accounting from the University of St. La Salle, an institution in the Philippine Islands. The educational evaluation in the record states that this degree is the educational equivalent to a baccalaureate degree in accounting from an accredited college or university in the United States. Accordingly, the beneficiary is qualified for the proposed position.

As related in the discussion above, the petitioner has established that the proffered position is a 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.

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