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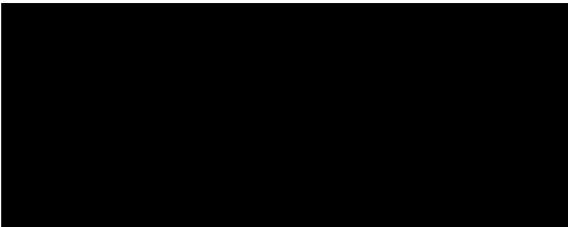


FILE: WAC 04 130 50458 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 2006**

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 retail store that sells children and baby products. It seeks to employ the beneficiary as part-time budget 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 on the ground that 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 budget 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 analyzing present and previous variables in order to evaluate future projections; implementing and maintaining a budgetary system to control expenditures primarily directed to expansion of facilities, advertising and marketing, purchasing products, and project-based activities; providing financial analysis and advice on the financial implication of statements; explaining budgetary variances and their tax implications and remedial procedures (in a budgetary aspect) to rectify discrepancies; providing internal control procedures that involve a check and balance system to verify sales, expenses, assets, and liabilities; developing and instituting a computerized budgetary software system. In a July 6, 2004 letter, submitted in response to a request for additional evidence, the petitioner stated that the beneficiary will provide a correct calculation as to present and previous operations concerning revenue, costs, and administrative-related areas and will create and use templates to assemble budgetary data, analyze budgetary patterns, carry out project expenditure analyses, and create ongoing status reports. The beneficiary will also design and implement a budgetary system to better manage expenditures; oversee day-to-day accounting; develop and maintain a business proposal system and a budget monitoring system; and carry out strategic planning, budgeting, forecasting, and reporting analysis. The petitioner requires a bachelor's degree in accounting, finance, business administration, or economics.

The director stated that many of the proposed duties reflect those of a budget analyst as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*). The director stated that sole reliance on duties resembling those of a budget analyst as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. According to the director, the nature and complexity of the proposed duties combined with the nature of the petitioning entity are factors that are considered when determining whether a position qualifies as a specialty occupation. The director discussed the *Handbook's* description of a budget analyst. The director found that the petitioner does not have the organizational scope or complexity to require the services of a budget analyst and is not in the business of providing budget analysis for private industry or governmental agencies. The director concluded that the petitioner does not employ financial staff. The director stated that since the petitioner has only nine employees, the proposed position would involve bookkeeping, accounting, and stock clerk and warehousing duties - all of which are not specialty occupation duties. According to the director, the beneficiary would perform only incidental specialty occupation duties such as budget analysis. As such, the director concluded that the petitioner would not use the beneficiary in the capacity as a budget analyst exclusively in the development, analysis, and execution of budgets. The director stated that the evidence did not show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director found the submitted job postings unpersuasive in establishing that the proposed position is a specialty occupation.

On appeal, counsel states that the proposed position is that of a budget analyst as that occupation is depicted in the *Handbook*, and that the *Handbook* indicates that a baccalaureate degree in accounting is appropriate for a budget analyst. Counsel refers to letters from Dr. Janice Bell and Dr. Elizabeth Landaw to show that the proposed position is that of a budget analyst, and counsel cites to a case to assert that a petitioner's supporting evidence must be carefully considered. Counsel disagrees with the director's finding that the proposed position would encompass the duties of an accounting clerk, a bookkeeper, and a stock clerk. Counsel maintains that case law indicates that the petitioner's size or its past practice is irrelevant in determining whether a proposed position is a specialty occupation. Counsel points out that the submitted organizational chart refutes the director's statement that the petitioner does not employ financial staff as it shows that the petitioner employs a person to handle payroll and accounts payable and also employs an accountant who prepares financial statements, profit and loss statements, and balance sheets.

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 not a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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. In a July 6, 2004 letter the petitioner states that it sells various baby and children's products including baby cribs, beds, strollers, car seats, feeding bottles, and bedding for cribs and that it obtains the products globally. The petitioner asserts that because of growth it now requires the services of a budget analyst. The record indicates that the petitioner had gross sales of \$1,305,111 in 2000; \$1,279,288 in 2001; and \$1,455,791 in 2002; and the organizational chart reflects that the petitioner employs nine employees, including a part-time accountant. The evidence submitted in the record – tax records, the organizational chart, employee wage reports, advertisements of products in *Los Angeles Family* – along with the petitioner's job description, which is summarized on the third page of this decision, reveal that the proposed duties are specialized and complex, requiring a bachelor's degree in accounting or a related branch of knowledge. Consequently, the petitioner establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The AAO must now consider whether the beneficiary is qualified to perform the proposed position, as it requires a baccalaureate degree in accounting or a related branch of knowledge. Included in the record of proceeding is a copy of the beneficiary's transcript and bachelor's degree in accountancy, and an educational evaluation that states that the beneficiary's baccalaureate degree in accountancy is the equivalent to a baccalaureate degree in accounting from an accredited university in the United States.

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.