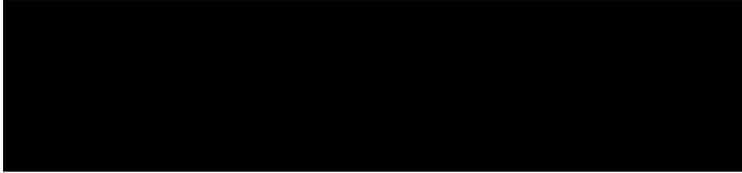




U.S. Citizenship
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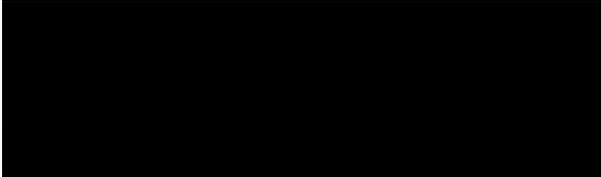
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FILE: WAC 03 164 52968 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 2006**

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 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 healthcare facility 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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:

[A]n 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 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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's requests for evidence; (3) the petitioner's responses to the director's requests for evidence; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a healthcare facility with 62 employees, was established in 1980 and has a gross annual income of \$2,550,000. It proposes to hire the beneficiary as a financial accountant. In his November 26, 2003 response to the director's request for evidence, counsel stated that the duties of the proposed position included planning, developing, and implementing accounting policies and goals; analyzing division budget requests to identify areas in which reductions can be made and allocating an operating budget; facilitating monthly meetings the financial director will evaluate job costing and management billable hours; reviewing activity reports and financial statements to determine progress and status in attaining objectives, and revising objectives and plans in accordance with current conditions; communicating clearly and directly with employees concerning performance expectations, productivity, and accountability; developing employees for future advancement; possessing knowledge regarding business, taxation, compilation, reviews, certified audits, and financial statements. The beneficiary would also manage eight subordinate bookkeepers and accounting clerks and assume responsibility for the overall financial direction, coordination, and evaluation of four facilities. In assuming responsibility for these facilities, the beneficiary would carry out supervisory responsibilities including interviewing and training employees and planning, assigning, and directing work, appraising performance, and rewarding and disciplining employees.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a bookkeeper or accounting and auditing clerk.

On appeal, counsel contends that the director erred in denying the petition.

While some of the duties of the proposed position may reflect those of bookkeepers or accounting and auditing clerks, the majority are those normally performed by accountants, and the AAO agrees with counsel that the proposed position is that of an accountant. The beneficiary would oversee a staff of eight bookkeepers and accounting clerks, who would perform many of the non-accounting functions necessary for the petitioner's smooth business operations.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* states that for an accountant, a bachelor's degree in accounting or a related field is required. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary possessed the educational equivalent of a bachelor's degree in accounting, so she is qualified to perform the duties of this specialty occupation

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the director's order will be withdrawn and the petition approved.

The director noted in his denial of the beneficiary's previous extension of status as a B-2 visitor that the beneficiary had enrolled in a course of study without having received classification as an F-1 or M-1 student. The beneficiary's request for extension of status was thus denied on May 20, 2003. Thus, for having violated the conditions of her stay it appears that the beneficiary was out of status when the petitioner filed the petition on May 6, 2003. The beneficiary would thus be ineligible for a change of status to H-1B. The director will make this determination, which is beyond the scope of the AAO's jurisdiction.

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.