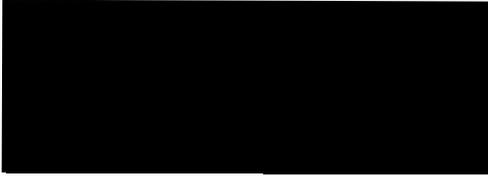




U.S. Citizenship
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Services

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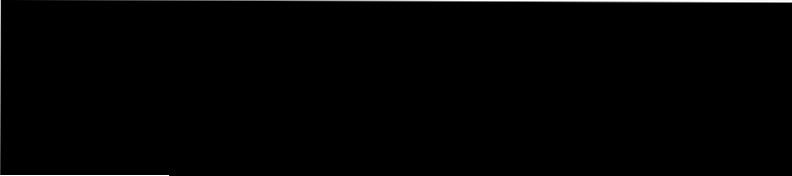


FILE: WAC 04 180 53036 Office: CALIFORNIA SERVICE CENTER Date: JUL 11 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a clothing importer and exporter that seeks to employ the beneficiary as an accountant and to classify her 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 proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 bachelor's 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) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; (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 I-129 petition; the company support letter; and the petitioner's response to the director's RFE.

According to this evidence, the beneficiary would perform duties that entail, in part: coordinating the implementation of accounting and accounting control procedures, particularly for purchasing, invoicing, and inventory control systems; analyzing financial information detailing assets, liabilities, and capital; preparing financial reports such as balance sheets, profit and loss statements, and operating cash flow statements to summarize the company's current and projected financial position; maintaining and reconciling ledger accounts; preparing journal entries; handling payroll processing; preparing monthly and quarterly payroll tax reports; administering and monitoring purchasing and inventory control systems and procedures to make sure that operational reports adhere to accounting guidelines and principles; providing management with reports that specify and compare factors affecting prices and profitability of products and services; handling cost analysis and inventory cost control; providing management with financial analysis of monthly operating and financial reports for business planning and decision making purposes; analyzing financial information detailing accounts payable, licenses, and taxes; preparing reports to summarize current and projected company accounting positions with reference to scope of responsibility; auditing contracts, orders, and vouchers; and preparing reports to substantiate individual transactions prior to settlement. The petitioner indicated that it required an individual who possessed a bachelor's degree with a major in accounting or its equivalent.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* is misplaced. The director discussed the *Handbook's* description of accountants, and stated that the petitioner does not have the organizational complexity, scale of business, or does not engage in the type of business to require the services of a part or full-time accountant. The director also found that the proposed duties more closely resembled those of a bookkeeper, not an accountant. The director stated that the evidence is insufficient to show that the proposed duties could not be performed by an experienced person whose educational training falls short of a bachelor's degree. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that the petitioner's bookkeeping clerks, not the beneficiary, will perform basic bookkeeping and clerical tasks as each sale is made. Counsel asserts that, due to its high volume of business, the petitioner needs the beneficiary's services to provide monthly analysis of cost and profit. Counsel asserts that the beneficiary will prepare its complex corporate tax return and reports

The AAO agrees that the record establishes that the proposed position is an accountant, and is a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that the proposed position meets the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

An important factor CIS considers, to determine whether or not this criterion has been met, is whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires at least a bachelor's degree in a specific field of study. See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The AAO routinely

consults 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.

As the evidence establishes that the duties of the proposed position are those of a management accountant and the *Handbook* indicates that these positions require bachelor's degrees in accounting or related fields, the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). In the instant case, the record establishes that the petitioner grosses more than \$8 million annually. While this level of income does not establish that the performance of all of the proposed duties would be at the level of a degreed accountant, the AAO finds that, in a high-volume, low profit margin wholesale clothing business, the budget-related and cost management responsibilities associated with the business are of sufficient complexity to impose a bachelor's degree requirement in accounting or a directly related field on the beneficiary. The AAO notes that one of the large, national discount chains with whom the petitioner has a contract, Walgreens, requires an electronic data interchange program to control costs and reduce inventory investment and that the accounting for each Walgreen's store is treated as a separate account. Also, due to these large contracts, the petitioner incurs large overhead costs and must maintain two efficiently run warehouses. Therefore, the petitioner has established the proposed position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The director's finding to the contrary is withdrawn.

The academic evaluation from the Educational Assessment, Inc., credentials evaluation service establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration from the Philippines Women's University in the Philippines. The beneficiary has a sufficient concentration in accounting or a related field to qualify her to perform the duties of an accountant. Therefore, the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

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 director's order is withdrawn and the petition is approved.