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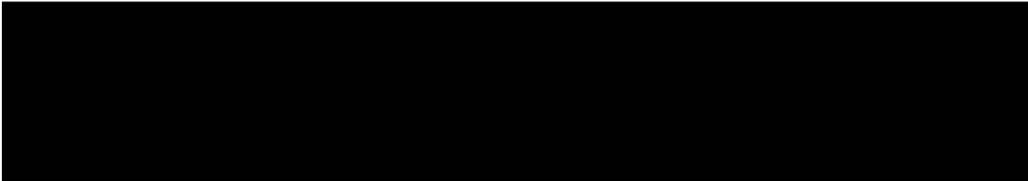
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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FILE: WAC 04 118 51449 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2006

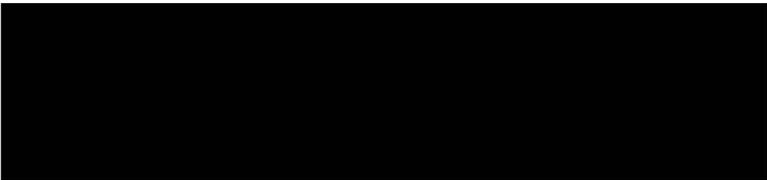
IN RE: Petitioner:



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, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The beneficiary filed a complaint in the U.S. District Court for the Central District of California seeking declaratory relief requiring Citizenship and Immigration Services (CIS) to approve the H-1B petition. *Rowena Belarmino v. United States Department of Homeland Security, United States Citizenship and Immigration Services, and Donald W. Neufeld Director, CSC*, CV-06-1889 MMM (CBX) (filed March 29, 2006). Upon review, the AAO, on its own motion, reopens the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The AAO will withdraw its prior determination. The petition will be approved.

The petitioner is a property management and development company, with 21 employees and a gross annual income of \$2.4 million. It seeks to employ the beneficiary, who is the beneficiary of a previously approved H-1B petition filed by another employer, as an accountant 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 he determined that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial; (5) the Form I-290B, with counsel's statement; and (6) the AAO's dismissal of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as an accountant and indicates that the proffered position requires a bachelor’s degree in accounting or business administration, with a concentration in accounting or finance. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s March 12, 2004 letter in support of the petition and counsel’s July 12, 2004 response to the director’s request for evidence. As described, the duties of the proffered position would require the beneficiary to:

- Identify and keep the records of company owned buildings, equipment and other property; record the description, value, location and other pertinent information of each item; conduct periodic inventories to keep record current and ensure that equipment is properly maintained; distribute costs of maintenance to proper accounts; examine records to determine that acquisitions, sale retirements and other acquisitions have been made; prepare statements reflecting monthly appreciated and depreciated values; summarize statements on an annual basis for income tax purposes; prepare schedules for amortization of buildings and equipment; and develop and recommend property accounting methods to provide effective controls;
- Prepare cash flow projections; project the amount of cash expenditures, as well as how these expenses will be applied; engage in budgetary projections, requiring an analysis of income expenses and capital expenditures, and the preparation of sales, costing and administrative budgeting, as well as an analysis of standard and variable costs that are particularly oriented to the real property industry;

- Prepare and analyze financial statements, advising management on the financial implications and explaining variances, potential tax consequences, and how to rectify any discrepancies; and prepare profit and loss statements and balance sheets;
- Use, develop and modify a computerized accounting software system;
- Research and explain new tax policies and their consequences; assist in any tax audits; and negotiate and settle any tax liabilities; and
- Audit the petitioner's annual, quarterly and periodic financial statements; and conduct a compliance audit to determine the petitioner's adherence to loan covenants and tax provisions.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner has stated that the proffered position is that of an accountant. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting. [*Handbook* at page 70].

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would require the beneficiary to have an understanding of accounting principles. However, the performance of duties requiring accounting knowledge does not establish the proffered position as that of an accountant. The question is not whether the petitioner's position requires knowledge of accounting principles, which it does, but rather whether it is one that normally requires the level of accounting knowledge that is signified by at least a bachelor's degree, or its equivalent, in accounting. Therefore, to establish the proffered position as that of a degreed accountant, the petitioner

must prove that the nature or complexity of its business and/or financial operations requires the beneficiary to possess a four-year degree in accounting or its equivalent.

Based on the record before it, the AAO finds the petitioner to have demonstrated that the particular accounting employment associated with its operations is of sufficient complexity to impose a degree requirement on the beneficiary. The petitioner has submitted evidence that establishes it as a cooperative housing corporation subject to regulation under section 213 of Title II of the National Housing Act, as amended, and, therefore, subject to audits to establish its compliance with the requirements imposed on housing programs assisted by the Department of Housing and Urban Development. Copies of the reports of such audits are included in the record and indicate that certain of the petitioner's financial operations – federal financial reports, mortgage status, the replacement reserve, cash receipts and disbursements and management functions – must be handled in compliance with standards established by *Government Auditing Standards*, issued by the Comptroller General of the United States and the *Consolidated Audit Guide for Audits of HUD Programs*. While not all of the duties described by the petitioner are at the level of a degreed accountant, the AAO finds that the beneficiary's responsibility for ensuring that the petitioner's financial controls and statements/reports meet federal standards for administering a HUD-assisted program is of sufficient complexity to require her to hold a four-year degree in accounting or a directly-related field. Accordingly, the petitioner has established the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to the record before it to determine whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To establish the beneficiary's qualifications to perform the duties of a degreed accountant, the petitioner has provided copies of the beneficiary's 1985 diploma from the Colegio de San Juan de Letran Calamba in The Philippines, awarding her a baccalaureate degree in commerce; her academic transcripts from that institution; and an evaluation of her educational credentials prepared by International Credential Evaluators (ICE), Inc. in Norman, Oklahoma. The ICE evaluation finds the beneficiary's degree to be the equivalent of a baccalaureate degree in management from an accredited university in the United States.

Having reviewed the above documentation, including the beneficiary's academic transcripts, the AAO concurs that the beneficiary holds the equivalent of a U.S. baccalaureate degree and finds that her degree equivalency reflects a strong emphasis in accounting and finance, academic fields directly related to accounting employment. Accordingly, the petitioner has established that the beneficiary holds a foreign degree that is equivalent to a U.S. baccalaureate degree required by the proffered position, i.e., a degree in management, with a major in accounting/finance. The beneficiary is qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C).

For the reasons previously discussed, the petitioner has established both that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will withdraw its prior decision.

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 met that burden.

ORDER: The AAO's prior decision is withdrawn. The petition is approved.