

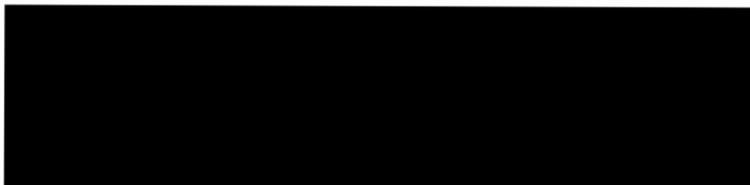
PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



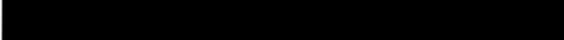
U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



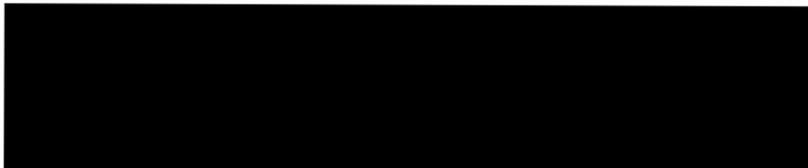
D2

FILE: WAC 03 145 52900 Office: CALIFORNIA SERVICE CENTER Date: **MAR 08 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 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 California Service Center denied the nonimmigrant petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a complaint in the U.S. District Court for the Central District of California. *Knit Fit, Inc. & Margarita L. Chua v. Alberto R. Gonzalez, et al.*, [REDACTED] (SSX) (filed April 22, 2005). Under agreement with the petitioner's counsel, the AAO reopened the matter. The previous decision will be withdrawn. The petition will be approved.

The petitioner is a wholesaler of sweaters, with 17 employees as of the time of filing and a gross annual income of \$21.9 million reported at the time of filing. It seeks to employ the beneficiary 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 the record failed to establish the proffered position as 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) the petitioner's response to the director's request; (4) the director's letter of denial; (5) the Form I-290B, with a letter from the petitioner; (6) the AAO dismissal of the appeal; (7) the AAO request for evidence; and (8) counsel's response to the AAO request. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's 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.

In its prior dismissal of the petitioner’s appeal, the AAO, while it concluded that the duties of the proffered position required the beneficiary to have a knowledge of accounting, did not find these duties to require a level of knowledge acquired only through a bachelor’s degree or its equivalent. Accordingly, the AAO’s November 10, 2005 request for evidence sought information that would provide a full understanding of the duties to be performed by the beneficiary, including evidence of the business environment in which these duties would be performed. It specifically requested information concerning the petitioner’s structure and revenues.

While the size of a petitioner’s business is normally not a factor in determining the nature of a proffered position, both its level of income and the scope and/or complexity of its operations are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an accountant. In such cases, the AAO reviews the record for evidence that the petitioner’s operations are of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree or its equivalent in accounting or a related academic field.

In its response to the AAO request for evidence, the petitioner submits an expanded description of the beneficiary’s duties, clarifying and further defining these tasks in terms of its business. It also provides a copy of its organizational chart indicating the placement of the beneficiary within the company structure, a list of 17 employees (not including the beneficiary) by name, title and function, 2003 Quarterly Wage Reports for these employees and the beneficiary, and its 2003 and 2004 federal and state tax returns, which establish gross annual revenues of approximately \$38 million and \$37 million respectively, and proof of the petitioner’s presence in China.

This documentation establishes the petitioner as a business of considerable size and complexity, with significant revenues. In this context, the AAO finds the duties described by the petitioner to identify a more complex financial role for the beneficiary than was previously indicated by the record, one requiring a greater understanding of accounting practice and principles. The analysis and interpretation of financial data, when dealing with revenues at the level indicated by the petitioner’s tax returns, are not duties performed by bookkeepers. Instead, they reflect the employment of management accountants who, as described in the 2006-2007 edition of the *Handbook*, “analyze and interpret the financial information that corporate executives

need in order to make sound business decisions.”¹ As the *Handbook* also indicates that the occupation of management accountant requires at least a bachelor’s degree in accounting or a related field, the AAO finds the petitioner to have established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – 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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in accounting. This evidence includes copies of the beneficiary’s diploma from the Far Eastern University in The Philippines documenting her 1971 bachelor of science degree in commerce, her academic transcripts, and an evaluation of her educational credentials by the International Education Research Foundation (IERF), Inc. in Culver City, California. The IERF evaluation finds the beneficiary’s degree in commerce to be the equivalent of a baccalaureate degree in business administration, with a concentration in accounting, from an accredited college or university in the United States.

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos001.htm.

Having reviewed the documentation provided by the petitioner, the AAO accepts the IERF evaluation and finds the beneficiary to hold a foreign degree that is the equivalent of a U.S. baccalaureate degree required by the proffered position, a business administration degree with a major in accounting. Therefore, the petitioner has established the beneficiary as 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 the proffered position as a specialty occupation and the beneficiary as qualified to perform the duties of the position. Accordingly, the AAO's previous decision is withdrawn.

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 previous decision is withdrawn. The petition is approved.