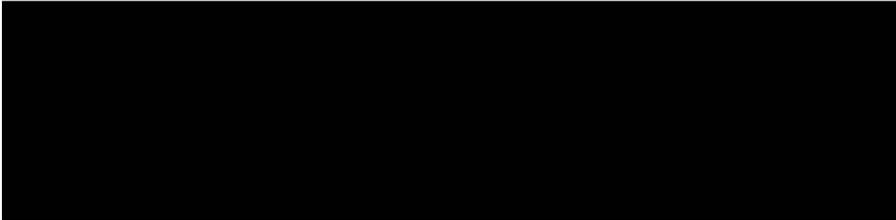


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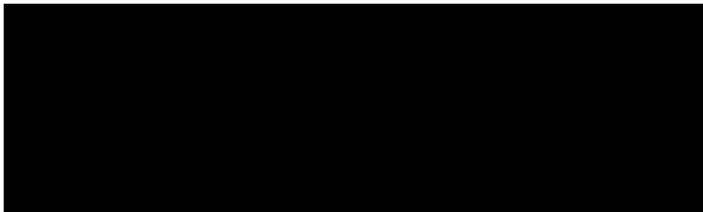
FILE: WAC 04 174 51371 Office: CALIFORNIA SERVICE CENTER Date: MAR 27 2006

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael T. Kelly
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a provider of telecommunications services. It seeks to employ the beneficiary as a financial accountant and to extend her classification 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 record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In its initial submission, including Form I-129 and an accompanying letter, the petitioner described itself as a telecommunications company, established in 1998, with 13 employees and gross annual income of \$8.8 million. The petitioner indicated that it proposed to hire the beneficiary as a part-time financial accountant, working 27 hours/week, and listed the duties of the job as follows:

- Make journal entries to company accounting record, maintain general ledger and bank reconciliation (40% of time).
- Accumulate and verify the data needed for preparation of balance sheet and income statements (10% of time).
- Analyze specific balance sheet data and income statement data, estimate cost and expense in order to improve efficiency and increase profit (15% of time).
- Process the payroll for employees biweekly, complete monthly and quarterly payroll tax forms (10% of time).
Process invoice timely and accurately according to company and department policies (10% of time).
- Maintain and update vendor's data, closing and balancing all accounts payable at month-end, maintain checking account and alert management to any balance issues, and prepare financial report to management (15% of time).

The minimum educational requirement for the position, the petitioner stated, is a bachelor's degree in accounting, finance, or a related field. The beneficiary is qualified for the job, the petitioner indicated, by virtue of her master of business administration (M.B.A.), with a concentration in finance, which she received from the University of La Verne, in La Verne, California, on August 31, 2001. The record shows that the beneficiary initially received H-1B classification, valid from January 28, 2003 to June 19, 2005, pursuant to a petition filed by [REDACTED] in June 2002. According to the petitioner, the beneficiary worked 16 months for that company as a financial analyst. The petitioner changed employers pursuant to an H-1B extension petition filed by [REDACTED] in October 2003. The petition was approved in April 2004 with a validity period of April 20, 2004 to October 22, 2006.

In response to the RFE the petitioner provided a more detailed description of the proffered position, listing the job duties on a daily, monthly, and annual basis, as follows:

Daily

- Review daily sales report of the front desk, inquiry the differences, and report to the CEO and sales managers.
- Review the daily sales, cash receipts, and cash disbursement journal and check payments and authorize the entry.
Review the daily credit card report and daily sales report. Discuss the variance with credit card company, if necessary.
- Review daily inventory status and order inventory from vendors. Some vendors are Mandarin speakers.
Track purchase, custom, and duty shares.

Monthly

Evaluate monthly performance of employees according to the company's incentive plan, calculate salaries, commission, bonus, income tax and social security tax withholding of every employee and prepare payroll checks and file monthly/quarterly payroll tax returns.

Compile monthly financial statements, evaluate budget execution performance, follow-up and control of budget execution, and report the budget variances to the president.

- Perform statistical analysis over monthly product, customer, sales, and service report to the president.
- Review monthly sales invoices, reconcile with daily and monthly statements, and file and prepare monthly sales tax return.
- Evaluate employee's monthly performance, and prepare payroll checks, and explain the details of payroll to the company's employees.
- Design monthly sales promotion plan and schedule with the company's management, evaluate and analyze the cost and financial factors.

Prepare monthly advertisement budget and plan. Prepare monthly advertisement report by cost and effect factors. Review and renew advertisement agreements with local TV and newspaper media.

Annual

- Compile the annual financial statements.
- Design annual bonus and profit sharing plan.
- Calculate annual loyalty payment and evaluate the loyalty contract for next year.
- Prepare annual budget and analyze budget follow-up of prior year.
- Prepare annual payroll tax return for federal and state regulatory authorities.
- Review annual IRS tax return draft prepared by the company's CPA.
- Evaluate annual business liability insurance, and health policy.
- Attend annual manager meetings. Report and analyze the annual budget and actual financial status to executives.

The petitioner also submitted additional documentation in response to the RFE – including its organizational chart; a list of its employees showing their job titles and duties, educational degrees, and immigration status; copies of its federal income tax return for 2002 and its state quarterly wage reports for the last quarter of 2003 and the first two quarters of 2004; photographs of the petitioner's business premises; as well as a W-2 statement and payroll check from the beneficiary's previous employer in the United States [REDACTED] and a letter from its president certifying that the beneficiary was employed by the company as a financial accountant from October 16, 2003 to May 31, 2004.

In his decision the director found that while some of the duties of the proffered position involve accounting tasks, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the proffered position could not be classified as an accountant position for two reasons. The first was that the overall duties of the position were closer to those of a bookkeeping, accounting, or auditing clerk, as described in the DOL *Handbook*. Those positions, the director pointed out, do not qualify as specialty occupations because they rarely require baccalaureate level education in a specific specialty. Noting that the petitioner's organizational chart did not identify any employee performing

bookkeeping and accounting clerical duties, the director concluded that duties normally performed by accounting, bookkeeping, and auditing clerks “would clearly be a part of the duties of the position offered” and that any duties normally performed by an accountant “would only be incidental to the primary duties.” The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engaged in the type of business for which an accountant would typically be required for any significant length of time. In this connection the director found that the petitioner’s business operations are not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting functions. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in finding that the duties of the proffered position are primarily those of a bookkeeping, accounting, and auditing clerk, rather than those of an accountant. The job description provided by the petitioner is fully consistent with the *Handbook*’s description of an accountant, counsel contends, and the petitioner has a legitimate need for an accountant’s services in view of its business volume, which is documented in the record. Counsel states that the beneficiary began working for the petitioner as a part-time accountant, under the controller (as indicated in the organizational chart), at the time the instant extension petition was filed in June 2004.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the duties of the proffered position accord with the general description of the accounting occupation in the *Handbook*, 2006-07 edition:

Accountants and auditors help to ensure that the Nation’s firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services, including public, management, and government accounting, as well as internal auditing, to their clients. Beyond carrying out the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services.

As further explained in the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which management accountant best describes the proffered position in this petition.

Management accountants – also called cost, managerial, industrial, corporate, or private accountants – record 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. Usually, management accountants are part of executive teams involved in strategic planning or the development of new products. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement 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.

Id. Based on the entire record – including documentation of the petitioner’s employee roster and organizational structure, the volume of business it transacts (the 2002 federal income tax return records gross receipts of \$8,836,267 that year), and the specificity of the accounting duties described by the petitioner, the AAO is persuaded that the beneficiary will be performing the services of an accountant in the proffered position.

The *Handbook* states that most accountant positions require at least a bachelor’s degree in accounting or a related field. The AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (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.

The record includes copies of the beneficiary’s educational degree and transcript showing that she earned an M.B.A. with a concentration in finance from the University of La Verne, in Laverne, California, on

August 31, 2001. Based on this foregoing documentation the AAO determines that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(I) to perform the services of the pertinent specialty occupation – an accountant.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

ORDER: The appeal is sustained. The petition is approved.