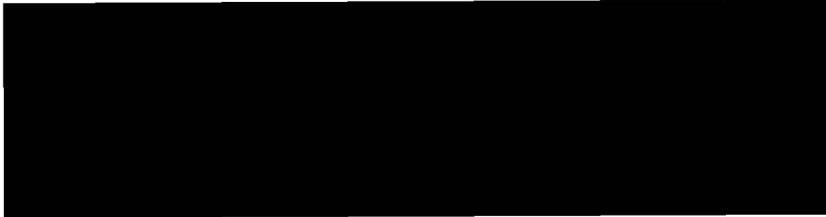


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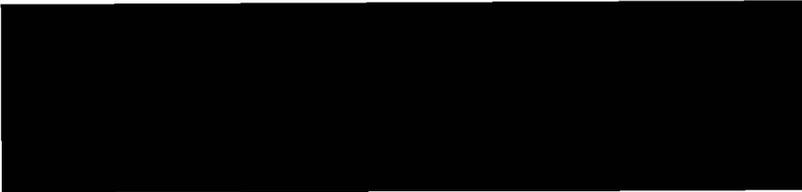
IN RE: Petitioner:



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.

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 property management company. It 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 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, an appeal brief, and some previously submitted materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a property management company that manages a community of 3,000 rental apartments. The petitioner indicates that its business was established in 1972, has 85 employees and gross annual income of \$38 million, and would like to employ the beneficiary's services as an accountant to prepare, analyze, and verify quarterly and yearly profit and loss statements, perform audits, and prepare payroll statements, monthly expense reports, and financial statements. In a job announcement on the letterhead of Westlake Village Apartments, the petitioner states that the accountant will work in the company's upgrade department and be charged with the following duties and responsibilities:

Perform various accounting duties including planning, budgeting, analysis, and job costing

Process accounting work by establishing and maintaining accounting records of financial activities for upgrade production, capital, and special project accounts. Ensure accounts are reconciled, balanced, and maintained in accordance with established policies and procedures. Prepare analyses of unit production costs, compile financial data, and assist in the development and implementation of the monthly production forecasts. Planning responsibilities include monthly, quarterly, and fiscal reporting deadline, preparing for audit review, and analyzing daily operations, monthly production costs, trends, and financial obligations incurred by conducting studies which provide detailed information on costs of supply purchases, inventory, and labor rate services to project per unit production expenditures. Tasked with improving the efficiency of the operation by reviewing and examining methods, procedures, tools, and equipment as well as monitoring trade and industry trends, inventions, and recommendations

Also review budgeted and forecasted numbers and explain financial variances. Recommend on budgeting and cost control and prepare reports and account reconciliations between the actual accounts and the budget ledgers on multi-year upgrade projects to substantiate capital expenses and justify costing of other supplies used. Administer the job cost module of the department's accounting system and inspect books for efficiency, effectiveness, and use of accepted accounting procedures. Verify records of financial transactions to determine accuracy and completeness of accounts information. Ensure correct accounting codes are assigned on all upgrade and capital expenditure transactions. Review purchase requisitions from outside vendors to ensure supplies and inventory have been budgeted or within allotted budget. Vendors and suppliers may also be called upon for information on purchases, supplies, or products. Interpret data for deficient controls, duplicate accounts, extravagance, fraud, or non-compliance with management policies and regulations. Report finances directly to management and advise on resource utilization or changes in operations and financial activities.

The minimum educational requirement for the position, the petitioner states, is a bachelor's degree in accounting or a related field. The beneficiary received a bachelor of science in accountancy from Ateneo de Davao University in the Philippines on March 24, 2001. She also earned a master of business administration (M.B.A.) at National University in San Diego, California, on January 18, 2004.

The record includes excerpts from the petitioner's website and some printed literature describing the company's Westlake Village operation; an organizational chart which identifies the upgrade accountant as subordinate to the upgrade coordinator and the property director; state wage records; and a copy of the petitioner's business license for 2004-05 listing sixteen different addresses at which it was managing a total of 2,983 apartments, ranging from nine to 755 units per location, generating a business license tax of \$15,013.49

In his decision the director found that while some of the duties of the proffered position involve accounting tasks, a significant amount of the beneficiary's time would be spent performing the duties of a bookkeeping, accounting, or auditing clerk as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, positions which do not require a baccalaureate or higher degree. In the director's view, there were two reasons the proffered position could not be classified as an accountant position. The first was that the petitioner's organizational chart did not indicate that any bookkeeping, accounting, or auditing clerks were employed by the company to maintain accounting records for analysis by an accountant. The director concluded that duties normally performed by accounting, bookkeeping, and auditing clerks, positions that do not qualify as specialty occupations, "would clearly be a part of the duties of the positions offered." The second reason the proffered position could not be classified as an accountant, according to the director, was that the petitioner is not engage in the type of business for which an accountant would typically be required for any significant length of time. In addition, the petitioner's business operations were not of sufficient scale or complexity to require the services of a full- or part-time employee performing sophisticated accounting functions. The record failed to show that the duties of the proffered position could not be performed by an individual with less than baccalaureate level education, the director concluded, or that the position qualifies 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, counsel contends, is fully consistent with the *Handbook's* description of an accountant. Counsel reiterates that the beneficiary will perform accounting functions for the company's upgrade department, which is responsible for renovating apartments to preserve and enhance their marketability. As explained by counsel, the petitioner typically turns over 100 apartment units monthly and renovates the apartments, which vary in age from 30 to 50 years, at the rate of about 30 per month. "With the complexity of the financial transactions associated with the upgrade process," counsel maintain, "it is vital to the company to acquire an accountant . . . who can do an . . . analysis of the costs, budget, and financial flows of the department."

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 documentation of record – including the petitioner's business license showing that it manages nearly 3,000 apartment units; the petitioner's state wage reports for the first and second quarters of 2004; information in the company's website that confirms the scale of its business operations; 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. *See id.* The AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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 degrees and transcripts showing that she earned a bachelor of science in accountancy from Ateneo de Davao University in the Philippines on March 24, 2001, followed by a master of business administration from National University in San Diego, California, on January 18, 2004. Among the beneficiary's fourteen M.B.A. courses, five – including managerial accounting, seminar in financial management, advanced accounting, statistics and research methodology, and economics for managerial decision-making – are related to the proffered position. Based on the foregoing evidence the AAO determines that the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) 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.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

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