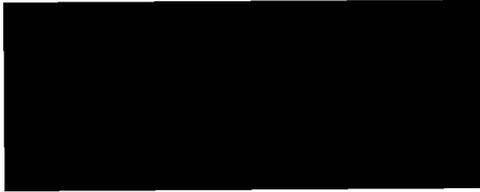




U.S. Citizenship
and Immigration
Services

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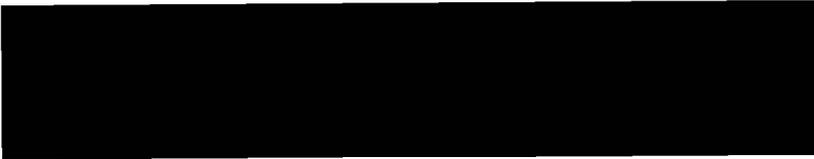
DZ

FILE: WAC 04 254 52088 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 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 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 chief financial officer and to classify him 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 supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a telecommunications company, established in 1999, that provides cellular and related telephone services in Guam and the Commonwealth of the Northern Marianas. The petitioner states that it has twelve employees, earned gross revenues of approximately \$5.5 million in 2003, and because of the company's rapid growth needs to hire a chief financial officer. The duties of the proffered position are described as follows in the petitioner's response to the RFE:

Conducts audits for management to assess effectiveness of controls, accuracy of financial records, and efficiency of operations: Examines records of departments and interviews workers to ensure recording of transactions and compliance with applicable laws and regulations. Inspects accounting system to determine their efficiency and protective value. Reviews records pertaining to material assets, such as equipment and building, and staff to determine degree to which they are utilized. Analyzes data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud, or lack of compliance with laws, government regulations, and management policies or procedures. Prepares reports of findings and recommendations for management. Conducts special studies for management, such as those required to discover mechanics of detected fraud and to develop controls for fraud prevention. Supervises the following functions and directs employees who perform these functions for [REDACTED] and [REDACTED], an affiliate.

1. Vendor contracts with Motorola and others for network research, development, and maintenance.
2. Federal Communications Commission regulatory compliance.

The beneficiary's job duties as a percentage of time are:

Cash and investment management.	25%
Terms, pricing and credit review.	15%
Product selection.	5%
Tax and financial compliance issues.	30%
Customer and vendor financial relationship issues.	15%
Strategic planning.	10%

The beneficiary is qualified for the proffered position, the petitioner indicates, by virtue of his bachelor of science in commerce, with a major in accounting, from De La Salle University in Manila, the Philippines, granted on August 27, 1983.

In his decision the director found that while some of the duties of the proffered position reflect those performed by financial analysts, accountants, or auditors, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, they appeared to be incidental to the primary

duties of the position, which more closely resembled those of an administrative officer or a bookkeeping, accounting, or auditing clerk. Those positions, as indicated in the *Handbook*, do not qualify as specialty occupations. Based on the evidence of record, the director determined that the petitioner did not have the organizational complexity or the financial staff to support the position of a chief financial officer. The director also determined that the petitioner failed to show that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations; that the petitioner has in the past required a degree in a specific specialty for the position; or that the position is so unique and specialized, or its duties so specialized and complex, that a baccalaureate degree or equivalent knowledge in a specific specialty is required. 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 beneficiary will be performing financial accounting and analysis for a multi-million dollar enterprise, will function at the senior management level, and will direct outside accountants and financial services personnel when such services are needed. Counsel points to the beneficiary's prospective salary of \$80,000/year as a further indication of his senior management and professional status.¹ Counsel submits copies of service and purchase agreements it has with three other telecommunications providers, which must be analyzed and managed by the chief financial officer, as additional evidence of the demanding nature of the proffered position and its qualification as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, 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 does not agree with the director that the duties of the proffered position are primarily those of an administrative officer, or of a bookkeeping, accounting, or auditing clerk. The AAO determines that the duties of the position accord with the *Handbook's* general occupational category of financial manager, and more particularly the sub-category of controller. As described in the *Handbook*, 2006-07 edition:

Almost every firm, government agency, and other type of organization has one or more financial managers who oversee the preparation of financial reports, direct investment activities, and implement cash management strategies

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, and risk and insurance manager. *Controllers* direct the preparation of financial reports that summarize and

¹ The petitioner's certified labor condition application (LCA) states that the proffered position will be paid at the rate of \$32.31/hour, which extrapolates to approximately \$67,000 over a 52-week year.

forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments

The record includes copies of the petitioner's federal income tax returns for 2002 and 2003, which record gross receipts for those years of \$3,150,594 and \$5,527,979, respectively. These tax returns are persuasive evidence of the petitioner's claim that the business is growing. The petitioner's organizational chart places the proffered position directly subordinate to the general manager and on the same hierarchical level as two engineering managers and a product-specific engineer. The documentation of record includes evidence of the petitioner's business transactions, cooperative agreements and contracts with other companies in the telecommunications industry, and general business records. Based on the evidence of record – including documentation of the petitioner's organizational structure, the volume of business it transacts, and the duties described by the petitioner – the AAO determines that the beneficiary will be performing the services of a financial manager – in particular, a controller – in the proffered position.

With respect to the educational requirements of financial managers, including controllers, the *Handbook* states as follows:

A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic requirement for financial managers.

Id. Based on the foregoing information, The AAO concludes 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 academic degree and transcript showing that he earned a bachelor of science in commerce, with a major in accounting, from De La Salle University in Manila, the Philippines, on August 27, 1983. The record also includes a report from an educational evaluation and assessment service in Miami Beach, Florida, declaring that the beneficiary's degree is equivalent to a bachelor of business administration in accounting from an accredited college or university in the United States. Based on the foregoing documentation, the AAO determines that the beneficiary is qualified to perform services in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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.