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FILE: WAC 04 255 54350 Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner specializes in the production of cakes, pastries, breads and food items. It has four retail locations, a production facility, and provides its products to independent grocery stores and institutional accounts on a contract basis. It seeks to employ the beneficiary as an accountant and endeavors 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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

[A]n 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 are 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) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an accountant. Evidence of the beneficiary’s duties was set forth in the petitioner’s letter filed in support of the Form I-129 petition. According to this evidence the beneficiary would:

- Prepare, analyze and verify the quarterly and yearly tax returns, perform audits, prepare payroll statements and deductions, monthly expense reports and financial statements;
- Prepare the company’s general ledger, monthly and yearly financial reports, monitor information systems, and compile and analyze financial information to prepare entries to accounts;
- Detail company assets, liabilities, and capital and provide tax planning advice;
- Review finances and current taxes and devise a long range tax plan and recommend ways to reduce taxes;
- Advise and recommend regarding tax strategies, advantages and disadvantages of certain business decisions or transactions;
- Devise a financial system that will help the company establish a more systematic and smooth inventory procedure;
- Prepare balance sheets, profit and loss statements, necessary checks, payroll, tax remittances, and other reports to summarize the company’s current and projected financial position;
- Modify and coordinate the implementation of the accounting and accounting control procedures;

- Monitor budgeting, performance evaluation, cost and asset management;
- Prepare letter correspondence with existing and prospective clients regarding transactions, financing and billing statements; and
- Update the computerized accounting system that retains all of the information necessary to prepare the quarterly and yearly tax information, payroll statements and deductions, monthly profit and loss reports and financial statements.

The petitioner finds the beneficiary qualified for the offered position by virtue of her foreign degree which was found by a credentials evaluation service to be equivalent to a bachelor's degree in accounting from an accredited college or university in the United States.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though varied and sometimes vaguely described, appear to be those noted for accountants. The *Handbook* notes that management accountants record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Management accountants are usually part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. Management accountants also prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities.

The petitioner's 2002 tax return indicates that its gross receipts or sales were \$6,983,499, and the petitioner states on the Form I-129 that it has 100 employees. The petitioner did not submit a copy of its 2003 tax return as it had not been filed when the petition or response to the director's request for evidence was submitted. The petitioner indicates, however, that it will be reporting gross earnings for 2003 of \$8,400,000, an increase of approximately 17 per cent over 2002. A close review of the record, including a review of the nature of the petitioner's business and the scope of its operations, establishes that the petitioner will employ the beneficiary as an accountant. The job duties include the preparation and analysis of monthly financial statements (balance sheets, income and cash flow statements), which are relied upon by management in the operation of the petitioner's business, and the preparation of corporate tax filings based upon the petitioner's business operations. The beneficiary will also assist with annual audits of company operations and submit reports for use by management in making business decisions and substantiating individual transactions. The nature and scope of the petitioner's business, and the duties detailed for the position relative thereto, establish that the duties of the proffered position are of such complexity that their performance requires the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* notes that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. The proffered position does, therefore, qualify as a specialty occupation as it satisfies the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not comment on this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. A credentials evaluation service has determined that the petitioner's foreign education is equivalent to a bachelor's degree in accounting from an accredited college or university in the United States. The beneficiary is, therefore, qualified to perform the duties of the

proffered position.

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 sustained that burden.

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