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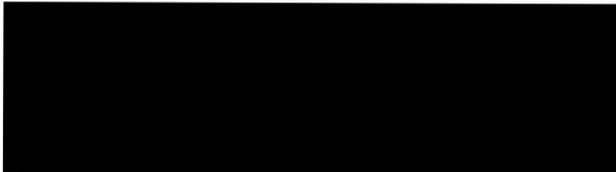
FEB 01 2007

FILE: WAC 05 065 50122 Office: CALIFORNIA SERVICE CENTER Date:

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

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is a real estate investment and development firm. 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 and in its response to the directors request for evidence. According to this evidence the beneficiary would:

- Compile and analyze financial information to prepare entries to accounts to document business transactions in accordance with generally accepted accounting principles (GAAP);
- Prepare financial statements, income statements, balance sheets, profit and loss statements, and other accounting reports to detail the petitioner’s current and projected financial position;
- Prepare budget and cash flow projections;
- Prepare reports that will show where cash flow will be allocated and where expenses will be applied;
- Prepare costing and evaluation of capital budgeting for each new investment or property the petitioner will develop or manage using the pay back period, the return on average investment, and discounted future cash flow;
- Evaluate all properties to analyze the cost involved in managing each and to achieve a realistic projection on the return of investment;
- Implement internal control procedures in adherence to company policy;
- Institute check and balance systems to examine assets, liabilities, and capital;
- Compute depreciation of assets and accruals of interest;
- Audit collections, lease contracts, job orders, project proposals, and prepare reports to substantiate individual transactions prior to settlement; and

- Develop and implement appropriate accounting software and systems to simplify operations and monitor financial transactions and to check account movement on all properties being managed by the petitioner.

The petitioner requires a minimum of a bachelor's degree in accounting or a related field for entry into the proffered position.

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 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 record indicates that the petitioner manages numerous properties for other companies and investment organizations. In doing so, the beneficiary is required to analyze numerous financial transactions and maintain accounts for each property managed, and to assign costs and expenditures relative to each individual property managed. The petitioner also states that the beneficiary will analyze properties that the petitioner intends to purchase and prepare cost and return on investment reports for management use in determining whether, and under what circumstances, purchases should be made. 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 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 establishes that the beneficiary obtained a bachelor's degree in accounting from the University of Santo Tomas – Manila, Philippines. The record does not, however, contain an evaluation of the beneficiary's foreign degree from a credentials evaluation service for the purpose of determining the equivalence of the petitioner's degree to a degree obtained at an accredited college or university in the United States. As such, it cannot be determined from the present record that the beneficiary is qualified to perform the duties of the proffered position. This matter must, therefore, be remanded to the director to determine whether the beneficiary is qualified to perform the duties of a specialty occupation. In doing so, the director may request such additional evidence as he deems necessary.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.