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FILE: WAC 04 191 51921 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 is a wholesale clothing manufacturing. It seeks to employ the beneficiary as a budget 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 because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief 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 requests for additional evidence; (3) the petitioner’s response to the director’s requests; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a budget accountant. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s requests for evidence. According to this evidence the beneficiary would:

- Evaluate the petitioner’s past and present financial information to estimate future revenues and expenditures;
- Use her analysis of the petitioner’s financial information to create a budget to meet the petitioner’s financial and operational goals;
- Gather, consolidate, review, and analyze monthly forecast data;
- Maintain and update master project listings for all company projects including the start date, end date and cost share requirements;
- Conduct fixed asset inventories, and subsequent to the inventory implement fixed asset cycle counting procedures and cycle counting on a regular basis;
- Develop and maintain a tooling tracking (both customer and deferred) process and develop project cash flow forecasts for capital improvements;
- Develop and improve methods for tracking, monitoring, analyzing and reporting raw materials, work-in-process and finished goods, as well as product gross margins and project analysis;
- Use her financial knowledge in preparing the petitioner’s budget to recognize financial trends, interpret their relevance, and incorporate them in budget forecasts;
- Establish and maintain budget systems that will be helpful in managing and controlling company expenses, such as advertising, marketing, project activities and property maintenance;

- Reduce unnecessary costs while maximizing company profits;
- Use her interpersonal and communicative abilities to elucidate budgets and the financial forecasting process for management;
- Interpret raw figures into company goals and expectations, highlighting areas that need particular attention;
- Advise management on matters such as the effective use of resources and cost-control measures;
- Analyze and interpret the petitioner's financial information for management to assist it in making sound business decisions;
- Maintain a budgeting system that will provide control of expenditures made to carry out activities such as advertising, marketing, and maintenance; and
- On a monthly basis identify and analyze: monthly revenues and costs; applications of broader financial principles and trends to daily operational goals, budget forecasting, documentation of monthly spending, interpretation of the petitioner's current financial status and presentation to management of profit-maximizing/cost-reduction suggestions, evaluation of company performance in light of financial goals, reconciliation of spending discrepancies with projected costs, and maintenance of a budgeting system to ensure close adherence to budget expectations.

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

The AAO routinely consults the 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 are varied, but generally fall within those noted for budget analysts. The *Handbook* states that private firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer a master's degree. In the public sector, a bachelor's degree in a wide range of educational disciplines will qualify an individual for a budget analyst positions. In private industry, a degree in a field closely related to that of the employing industry, such as engineering, will suffice. Other firms in private industry prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills. The *Handbook* does not state, however that a degree in a specific specialty is normally required for entry into an occupation as a budget analyst. Degrees in a wide range of educational disciplines may suffice for positions requiring a college education. The petitioner has not, therefore, established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)

The petitioner has established, however, that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's degree. In this instance, the beneficiary is required to prepare operating budgets for a company that produces clothing items and handbags with gross annual sales exceeding \$1,200,000 and low profit margins. In doing

so, the beneficiary must analyze virtually all financial operations of the company. This includes cost accounting analysis of ongoing production projects, some of which are interrelated and share various cost factors. The beneficiary is required to track, monitor, and analyze raw materials reports, work-in-progress, and finished goods product gross margins in monitoring costs and expenditures to determine budget compliance. The beneficiary is required to conduct financial analysis of company operations in making budget forecasts, ensuring budget compliance, and making reports to management for strategic business decisions. Under these circumstances, and considering the nature of the petitioner's business operations, the petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the proffered position qualifies as a specialty occupation.

The final position to be considered is whether the beneficiary is qualified to perform the duties of the offered specialty occupation. The director did not make that determination as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary holds a bachelor's degree in business administration from Miriam College in the Philippines. That degree has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration from an accredited college or university in the United States. The degree earned and course of study followed by the petitioner emphasizes quantitative and analytical skills and qualifies her to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.