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U.S. Citizenship  
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Services

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FILE: WAC 04 208 50718 Office: CALIFORNIA SERVICE CENTER Date: *JAN 08 2007*

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.

*for* *Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 real estate investment firm that seeks to continue its employment of the beneficiary as an accountant. The petitioner, therefore, endeavors to extend the beneficiary's nonimmigrant classification as a 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 basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The petitioner, a real estate investment firm with four employees and gross annual income of \$352,793, was established in 2000 and reorganized in 2003. It proposes to continue its employment of the beneficiary as an accountant. In its June 21, 2004 letter of support, the petitioner states that the duties of the proposed position would include maintaining accurate records; ensuring that the petitioner's taxes and reports are timely filed; prepare, record, analyze, and verify the petitioner's financial information; analyzing and interpreting the petitioner's financial information in order to help it make sound financial decisions; preparing financial reports for management, regulatory agencies, and tax authorities; continuing to advise management of tax advantages or disadvantages of certain decisions and prepare income tax returns; continuing to verify the accuracy of the petitioner's records; checking for mismanagement, waste, and fraud; examining financial and information systems, procedures, and internal controls to ensure that records are accurate and that controls are adequate; developing budgets; managing assets and investments; and recognizing and reducing risks.

The petitioner also emphasized that its proposed position was not that of a bookkeeper:

We cannot use a mere bookkeeper for the position because part of the functions of our accountant is to formulate financial feasibility projections necessary before we can invest in the property. It would be in our best interest to know first if the property we are interested in would be profitable. Such factors include: actual income, actual expense, projected income, projected expenses, Return on Investment, depreciation, possible rent and income increases, market comparison of properties in the same area, study of income producing real estate[,] and appraisal of the said property. I am not going to spend millions of dollars in an investment based on review of a mere bookkeeper. A professional accountant is what I need before I invest the money. It is only good financial sense to do so, just as one would not invest in the stock market without a stock broker.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

In his denial, the director stated that although many of the proposed duties appear similar to those performed by accountants, the beneficiary would be performing bookkeeping, accounting, or auditing clerk duties. Noting that accountants are not financial record keepers who maintain accounting records, the director did not accept the petitioner's contention that the proposed position is actually that of an accountant. The director also found that the petitioner's business is not of sufficient scale or complexity to warrant the services of a full-time accountant, and that it does not engage in the type of business for which an accountant would typically be required. The director also found that the record contains conflicting and contradictory evidence

regarding the petitioner's stated gross annual income, number of employees, and suspension of business activities.

On appeal, counsel submits evidence resolving the inconsistency regarding the petitioner's gross annual income in 2003, namely, that the 2003 income tax return for [REDACTED] reflects the petitioner's 2003 gross annual income as \$352,793, which is consistent with the figure stated on the Form I-129.<sup>1</sup> Counsel also submits evidence that the petitioner's operations were not suspended, as stated by the director. Counsel states that the discrepancy in the number of employees stated on the Form I-129 – one employee and two contractors – and the number claimed on its organizational chart – four employees and four contractors – is due to additional employees hired by the petitioner since the filing of the petition. While no evidence has been submitted to substantiate the petitioner's hiring of new employees, the AAO accepts counsel's assertion, as it is consistent with the evidence of record. Accordingly, the AAO finds that the petitioner has overcome the director's concerns regarding misrepresentation through submission of inconsistent and conflicting information.

The AAO now turns to the question of whether the proposed position qualifies for classification as a specialty occupation under the criteria set forth previously. Counsel contends that the director erred in denying the petition, and that the proposed position in fact qualifies for classification as a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position. It determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The record supports a finding that the petitioner will employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. The petitioner, through submission of detailed information regarding the company and the duties of its proposed position, has demonstrated that the duties of the position, despite the company's limited income and size, require a level of financial knowledge that may be obtained only through a baccalaureate degree in accounting or its equivalent. While some of the duties of the proposed position may reflect those of bookkeeping, accounting, and auditing clerks, the majority are those normally performed by accountants, and the AAO finds that the accounting knowledge required by the proposed position rises above that which may be acquired through experience or an associate's degree in accounting. Accordingly, the AAO agrees with counsel that the proposed position is that of an accountant.

The petitioner has submitted detailed information regarding its real estate investments. As the accountant for a real estate investment firm, the beneficiary would be required to manage investments, rents, capital gains, outstanding debts, depreciation, etc. Tax returns reflect a steady increase in income since 2000.

The totality of the evidence in this proceeding, including detailed information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational

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<sup>1</sup> The 2003 federal tax return lists \$352,793 as the gross income; the Form I-129 lists \$332,793, which appears to be a typographical error.

structure, establishes that the proposed position is that of a management accountant as described in the *Handbook*. According to the *Handbook*, such a position requires a bachelor's degree in accounting or a related specialty. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

According to an evaluation contained in the record, the beneficiary's foreign education is equivalent to a bachelor's degree in accounting from an accredited institution of higher education in the United States. The beneficiary therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the director's order will be withdrawn and the petition approved.

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.