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02

MAR 13 2006

FILE: EAC 05 133 52290 Office: VERMONT 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:  
[Redacted]

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.

Handwritten signature of Robert P. Wiemann in black ink.

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 computer retail hardware and software sales and repair company that provides sales and services for small business and home computers with networking and internet connections. In order to employ the beneficiary in a position that the petitioner has designated "Assistant Controller," the petitioner filed this petition for classification of the beneficiary 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 basis of his determination that the petitioner had failed to establish that the proffered position qualifies for classification as a specialty occupation under any criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, the director discounted the record's opinion from a Certified Public Accountant (CPA) on the basis that the CPA appeared to have "primarily based the opinion on" the petitioner's description of the proposed duties.

Counsel's submissions on appeal include: a five-page letter from the petitioner that discusses its operations, financial position, and plans for expansion; and a second letter from the CPA in which he discusses his knowledge of the petitioner's operations and finances.

The AAO finds that the petitioner has overcome the grounds for the director's denial and has established that the proffered position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), below.

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:

- (I) 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) consistently 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.

Documentary evidence in support of the petition includes copies of : (1) the petitioner’s federal income tax returns for two years; (2) a balance sheet that lists, for two years and with subcategories, the petitioner’s current assets, property and equipment, other assets, current liabilities, and stockholders’ equity; (3) bank records; (4) the petitioner’s Articles of Incorporation; (4) the petitioner’s IRS Form W-2 filings for the year prior to the filing of the petition; and (5) several “Daily Report” accounting documents and related invoices. As supplemented on appeal, the record now also includes the petitioner’s five-page letter of August 17, 2005 that expands upon previous information about its business operations and its need for an assistant controller; and a second letter from the CPA, dated August 17, 2005, that supplements his earlier letter by explaining that the basis of his opinion includes a ten-year relationship with the petitioner as a provider of CPA services and his review of “extensive operational and financial documentation, including tax returns, financial statements, and receipts for the company.” The AAO finds that the CPA’s second letter, submitted on appeal, favorably resolves the director’s concern about the CPA’s knowledge about the proffered position.

The totality of the evidence in this proceeding – which includes detailed information and documentation regarding the proposed duties, the petitioner’s business operations, the petitioner’s organizational structure, and a CPA’s opinion founded upon substantial knowledge of the petitioner’s operations and finances - establishes that the proffered position requires at least a bachelor’s degree in accounting or a related specialty. Accordingly, the petitioner has satisfied the specialty occupation criterion at 8 C.F.R. § 14.2(h)(4)(iii)(A)(I), by establishing that the proffered position is one which normally requires for entry a minimum of a baccalaureate or higher degree in a specific specialty.

The beneficiary’s academic transcript and an evaluation of the beneficiary’s education by a credentials evaluation service specializing in evaluating foreign educational credentials establish that the beneficiary holds a foreign degree equivalent to a bachelor’s degree in business administration with a major in accounting from an accredited institution of higher education in the United States. The beneficiary therefore qualifies to perform the duties of the pertinent specialty occupation in accordance with the provisions of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As the petitioner has established that the proposed position is a specialty occupation and that the beneficiary is qualified to perform its duties, the appeal will be sustained, and the petition will be granted.

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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.