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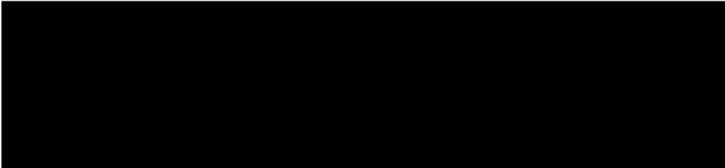
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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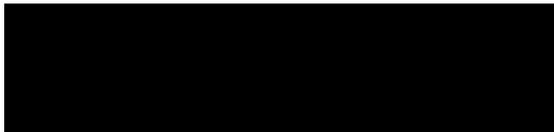
FILE: WAC 04 135 51218 Office: CALIFORNIA SERVICE CENTER Date: **SEP 24 2007**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 black ink, 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The AAO's previous decision will be withdrawn. The petition will be approved.

The petitioner is an importer and wholesale distributor of dessert ingredients and gourmet foods. It seeks to employ the beneficiary as an accountant. The petitioner endeavors to classify 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, 8 U.S.C. § 1101 (a)(15)(H)(i)(b). The director denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

In a decision dated May 1, 2006, the AAO affirmed the director's decision and dismissed the appeal. On May 31, 2006, counsel filed a Motion to Reopen/Reconsider Denial of Appeal. On motion, counsel contends that the position of accountant for the petitioner qualifies as a specialty occupation since the petitioner satisfies all four requirements for H-1B eligibility pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits new evidence to demonstrate that the petitioner's operations are complex as it is the largest distributor of chocolate in North America and its gross annual income is approximately \$13 million dollars. Counsel also asserted that the current accountant employed at the Miami branch office obtained a bachelor's degree in accounting and a master's degree in business administration. Counsel submits a classified advertisement for the position of management accountant for a bakery that requires a bachelor's degree in order to fill the position. Finally, counsel contends that the Department of Labor's *Occupational Outlook Handbook* specifies a requirement of a bachelor's degree for the position of accountant.

On motion, counsel for the petitioner submits the following: (1) information regarding the petitioner from its website; (2) the U.S. company's Federal Income Tax Returns for 2004 indicating gross receipts of \$13,375,810.00; (3) several contracts, purchase orders, and invoices for 2003 and 2004; (4) a list of the petitioner's clients; (5) a classified advertisement for the position of management accountant for a bakery requiring a bachelor's degree and, (6) a resume for the accountant employed at the Miami branch office indicating that the employee has a bachelor's degree in accounting and a master's degree in business administration.

The AAO finds that the materials submitted on motion overcome its earlier decision and will accordingly approve the motion, and the AAO's previous decision will be withdrawn.

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 one 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:

An 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.

On the Form I-129, the petitioner indicated a gross annual income \$4,410,719. On appeal, previous counsel for the petitioner indicated that the gross annual income of the company was \$1,398,031. As noted in the AAO's decision, the nature of the petitioner's business operations appeared to be relatively small and lacked sufficient scope and/or complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of financial knowledge that may be obtained only through a bachelor's degree in accounting or its equivalent. The AAO also noted in the decision that the petitioner failed to offer evidence of the specific financial requirements associated with the petitioner's company.

As noted above, on motion, the petitioner provided new documentation to establish the complexity of its business operations. The description of the duties of the proposed position, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree or its equivalent in accounting or a related field. The petitioner has overcome the grounds of the director's denial of the petition and the AAO's decision, and has demonstrated that the proposed position qualifies for classification as a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes that the beneficiary has the equivalent of a bachelor's degree in accounting. She therefore qualifies to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies for classification as a specialty occupation and that the beneficiary qualifies to perform its duties. Accordingly, the decisions of the director and the AAO 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 motion is granted. The decisions of the director and the AAO are withdrawn. The petition is approved.