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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 162 50546 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a hotel investment and management business that 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 (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

> *(1)* Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
>
> *(2)* Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
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> *(3)* Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
>
> *(4)* Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in business administration for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's educational background in business administration does not qualify him for an accountant position. On appeal, counsel states that the beneficiary is qualified for the position because the courses he completed, which include "Financial Accountancy," "Economic Analysis," and "Advanced Accounting and Accounting for Inflation," demonstrate an academic concentration in the field of accounting. Counsel further states that the beneficiary holds a certificate from The Institute of Chartered Accountants of Sri Lanka, the national professional accounting body of Sri Lanka.

The record contains the following documentation related to the beneficiary's qualifications:

- Bachelor of Commerce degree and transcripts issued to the beneficiary by a Sri Lankan university;

- Certificate of Membership, dated January 26, 1998, issued to the beneficiary by The Institute of Chartered Accountants of Sri Lanka; and

- Credentials evaluation from Global Education Group, Inc., dated November 27, 2002, indicating that the beneficiary holds the equivalent of a U.S. baccalaureate degree in business administration.

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) for its information about the duties and educational requirements of particular occupations. In its *Handbook*, 2004-2005 edition, the DOL finds that most accountant positions require a bachelor's degree in accounting or a related field. The record reflects that the beneficiary holds a baccalaureate degree in commerce conferred by a Sri Lankan institution, which has been determined to be equivalent to a baccalaureate degree in business administration from a regionally accredited U.S. university. The beneficiary's transcripts reflect the completion of accounting-related coursework, such as "financial accountancy," "advanced financial accounting and accounting for inflation," and "cost and management accountancy." The record additionally contains a Certificate of Membership issued by The Institute of Chartered Accountants of Sri Lanka admitting the beneficiary as an associate member. In view of the foregoing, it is concluded that the petitioner has demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation within the meaning of the regulations.

The petition may not be approved, however, because the director has not determined whether the proffered position is a specialty occupation. A review of the petitioner's tax documentation and organizational chart indicates that the petitioner may be primarily a motel business requiring the services of a bookkeeper. It is noted that the petitioner's 2001 federal tax return reflects $23,350 in compensation of officers and $38,704 in salaries and wages. It is also noted that the petitioner's organizational chart reflects the following positions: president; manager; three cashier/clerks; and housekeeping. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.