U.S. Department of Homeland Security

Citizenship and Immigration Services

D2

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: EAC 02 076 50594 Office: VERMONT SERVICE CENTER Date: JAN 08 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner operates a food market. It has three employees, a gross annual income of $375,000, and seeks to employ the beneficiary as an accountant for a period of three years. The director denied the petition on the ground that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information asserting that the proffered position qualifies as a specialty occupation.

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), 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.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

The duties of the proffered position were detailed with the filing of the I-129 petition:

> Prepares federal, state, sales, local and other tax returns of the company[;] Examines accounts and records and computes taxes owed according to prescribed rates, laws, and regulations, using computer[;] Advises management regarding effects of business activities on taxes, and on strategies for minimizing tax liability[;] Ensures that [the] company complies with periodic tax payment, information reporting, and other taxing authority requirements[;] Represents employer before taxing bodies[;] Devises and installs tax record systems[;] Applies principals of accounting to analyze financial information and prepare financial reports[;] Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions[;] Analyzes financial information detailing assets, liabilities, and capital, and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position, using calculator or computer[;] Audits contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement[;] Establishes, modifies, documents, and coordinates implementation of accounting and accounting control procedures[;] Advises company on other issues such as compensation, profit sharing, pension plans, real estate/lease transactions, computerization, business valuation, joint venture studies, buy/sell agreements, acquisitions, sales projections, changes in tax laws and audits.

Subsequent to the filing of the initiating petition, the director requested additional evidence. Specifically, the director noted that the petitioner was a relatively new company with few employees, modest or projected gross annual income, and had recently filed "several/numerous other H1B petitions." The director then asked the petitioner to submit evidence that it had sufficient work and resources available to satisfy the Service, now Citizenship and Immigration Services (CIS), that the beneficiary will be performing services in a specialty occupation.

In response to the director's request for evidence, the petitioner noted that the present H-1B petition was for a continuation of previously approved employment, with the first petition having been filed in 1999. The petitioner further stated that it has never filed any other H-1B petition as alleged by the director. The petitioner also submitted W-2 forms for tax year 2001 indicating that the beneficiary was paid $16,420 in wages for that year, and resubmitted the job description for the proffered position that was filed with the I-129 petition.

In denying the I-129 petition, the director noted that the petitioner had not submitted sufficient evidence to establish that the petitioner had sufficient work and resources to employ the beneficiary in an H-1B capacity for the time period requested.

On appeal, counsel asserts that the proffered position is that of an accountant, that the duties of the position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, and that a bachelor's degree is normally the minimum requirement for entry into the position. Counsel further asserts that the size of the petitioner's business is not determinative of whether the proffered position qualifies as specialty occupation.

The petitioner has qualified the proffered position as a specialty occupation. It is not the size of the petitioner's business operation or the petitioner's ability to pay an H-1B worker that determines whether a position qualifies as a specialty occupation, but rather the duties of the position and the industry of the petitioner's operations. *See Young China Daily v. Chappell,* 742 F. Supp. 522 (N.D. Cal. 1989). The duties to be performed by the beneficiary are complex and relied on by management in making strategic business decisions. For example, the beneficiary will: provide advice to management as to the effect business decisions will have on corporate taxes; analyze financial information and prepare reports summarizing current and projected company financial position; establish and modify accounting and accounting control procedures; and advise

management on such issues as compensation, profit sharing, pension plans, real estate transactions, buy/sell agreements, acquisitions and sales projections. These duties are normally performed by accountants. U.S. Department of Labor, *Occupational Outlook Handbook*, 2002-03 edition,(*Handbook*) at 21. The *Handbook* further notes that most accountant positions require at least a bachelor's degree in accounting or a related field. *Id.* at 22. The petitioner has, therefore, established that the proffered position is a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second and final issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

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

(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;

(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 petitioner submitted an evaluation of the beneficiary's foreign education from World Education Services, Inc. That evaluation determined that the beneficiary had the equivalent of a bachelor's degree in accounting from a regionally accredited institution in the United States. The beneficiary is, therefore, qualified to perform the duties of a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has sustained that burden. Section

291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.