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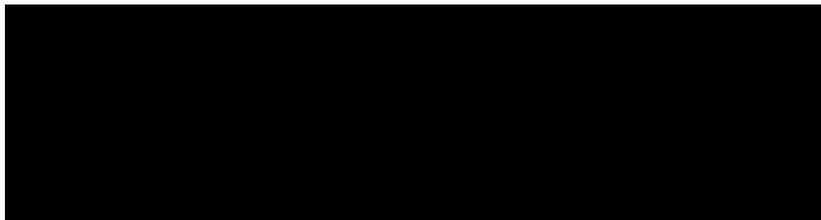
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 241 52828 Office: CALIFORNIA SERVICE CENTER Date: MAR 06 2006

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:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded.

The petitioner is a law office 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 § 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 proffered position is not a specialty occupation. The director found further that the beneficiary is not eligible for an extension, as he has not maintained his lawful nonimmigrant status. On appeal, the petitioner submits a brief and states, in part, that the director cites to a number of precedent decisions, such as *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000), that are not relevant or applicable to the petitioner's case. The petitioner also submits additional evidence, including copies of court decisions, a second letter from one of the petitioner's partners along with a Schedule E, Supplemental Income and Loss, and an expert opinion.

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form-I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

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.

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 proffered position.

The record of proceeding before the AAO contains: (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. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 20, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: preparing the petitioner's monthly and yearly financial reports; documenting business transactions by compiling and analyzing financial information; analyzing financial information detailing assets, liabilities, and capital; preparing balance sheets, profit-and-loss statements, and other reports; and making necessary modifications to and documenting and coordinating the implementation of the petitioner's accounting and accounting control procedures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting or business administration with a major in accounting.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeping, accounting, or auditing clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that it has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), namely that it normally requires a degree or its equivalent for the proffered position, "or under the alternative analysis of job duties provided herein."

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of an accountant for a law office established in 1965, which has a gross annual income of \$2.2 million, and which also manages \$1.8 million in properties owned by two of the petitioner's partners. A review of the *Handbook*, 2006-2007 edition, finds that most accountant positions require at least a bachelor's degree in accounting or a related field. Accordingly, the petitioner has overcome the grounds upon which the director denied the petition. The proffered position is a specialty occupation.

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this case, the beneficiary holds a bachelor's degree in business administration with a major in accounting conferred by a Filipino institution. The record, however, does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of an accountant, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory

requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 10, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.