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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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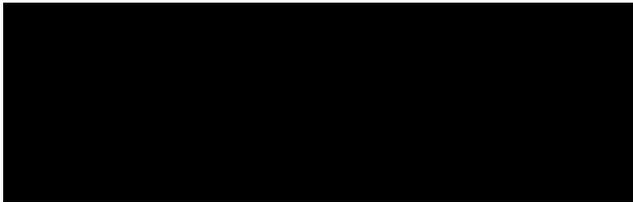
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FILE: WAC 03 201 50142 Office: CALIFORNIA SERVICE CENTER Date: **AUG 16 2005**

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:



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

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

The petitioner is a Japanese gourmet restaurant that seeks to employ the beneficiary as a part-time 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 and the beneficiary was in violation of her H-1B status at the time of the filing for an extension. On appeal, counsel submits a brief.

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 a part-time accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 30, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's May 30, 2003 letter, the beneficiary would perform duties that entail: preparing the general ledger, entries into the accounts, and monthly and yearly financial reports; monitoring information systems; detailing company assets, liabilities, and capital; devising a long-range tax plan; devising a financial system to ensure systematic inventory procedures; preparing balance sheets, profit-and-loss statements, checks, payroll, tax remittances, and other reports; modifying and implementing accounting and accounting control procedures; monitoring budgeting, performance evaluation, and cost-and-assets management; and preparing correspondence and billing statements.

The director found that the proffered position was not a specialty occupation because the job is not an accountant; it is a bookkeeper position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 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), or that there is a bona fide position that can be considered a specialty occupation.

On appeal, counsel states, in part, that the proffered position is primarily that of an accountant, and is not a bookkeeper or accounting clerk position. Counsel states further that the director neglects to acknowledge that the petitioner already has a bookkeeper to perform its bookkeeping duties. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel also states that the record contains supporting documentation such as job advertisements.

The proffered position is that of a part-time accountant for the petitioning entity, a gourmet Japanese restaurant, established in 1990, with 17 employees and a gross annual income of \$986,052. A review of the Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition, at page 70, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. In this case, the beneficiary holds a bachelor's degree in commerce with a major in accounting conferred by a Filipino institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in business administration with concentration in accounting from an accredited U.S. college or university. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.