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FILE: LIN 03 130 50409 Office: NEBRASKA SERVICE CENTER Date: JUL 13 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:  
[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

**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 petition will be approved.

The petitioner is a clothing retailer 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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; an undated 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, in part: interpreting the company's financial statements by ratio computation, such as financial statement ratio and trends in the ratio results; interpreting, extrapolating and analyzing ratio measurements of margins, working capital, current ratio, inventory turning and sales in inventory; forecasting future financial statements based on various conditions, such as past experience, current and future economic situation, and the company's available resources; preparing forecasts for use by creditors, banks, boards of directors and management; recommending budget amounts for advertising, security purchases and operational expenses to the board of directors; analyzing and comparing deviations between the budget and actual expenditure, finding the cause of the deviations and evaluating the performance of the employee in charge; analyzing the financial information for each of the petitioner's eight stores and evaluating the profit for each store; producing reliable data to determine which store should be sold and calculating the store's value; analyzing the cost of goods sold; managing fixed assets; ensuring that all financial information is posted accurately and completely; reporting analysis, findings, and recommendations to management monthly; and presenting analysis, findings, and recommendations to the board of directors yearly. The petitioner did not indicate what education a qualified candidate for the job would possess.

The director found that the proffered position was not a specialty occupation because the position is that of a bookkeeper combined with a general manager or executive, neither of which require a bachelor's degree in a specific specialty. The director also stated that the petitioner never indicated what educational level was required for the position.

On appeal, the petitioner asserts that the proffered position is an accountant, and not a bookkeeper or general manager. The petitioner states that the position requires a bachelor's degree in accounting or finance. The petitioner also states that it assumed that it was clear that an accountant would need to have a bachelor's degree in accounting or finance. In addition, counsel provides an expert opinion letter from the petitioner's outside accountant regarding the nature of the duties of the proffered position.

The AAO agrees with counsel that a position as an accountant is generally a specialty occupation and that the proffered position is an accountant.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from

firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for an accountant, a bachelor's degree in accounting or a related field is required.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The director found that the petitioner did not state that a degree was required in order to fill the position. The director is correct that the petitioner made no affirmative statement regarding the degree requirement until the appeal. The petitioner did, however, establish that the duties of the proffered position were those of an accountant, which is a specialty occupation. Therefore, despite the petitioner's lack of clarity regarding its own educational requirements for the position, the requirement for the degree was implied by the very occupation itself. In addition, the director dismissed the letter provided by the petitioner's outside accountant as also not including a degree requirement. There is no reason for the petitioner's accountant to state that an accountant needs a certain degree since she was speaking about the duties of the position. As the accountant noted in a supplemental letter provided on appeal, she also assumed that the degree requirement was understood for an accountant. She further explicated the needs of the petitioner for an in-house accountant.

The beneficiary has a bachelor's degree in economics from a foreign university and a master's degree in business administration from a United States university. During the course of his master's degree studies, the beneficiary took eight accounting classes out of 22 classes total. In addition, the petitioner submitted a letter from one of the beneficiary's accounting professors, stating that the beneficiary had adequate preparation to work in the field of accounting. The beneficiary is qualified to perform the services of an accountant.

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.