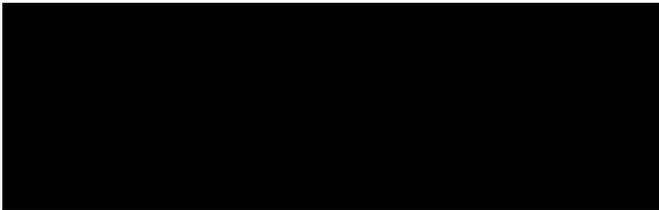


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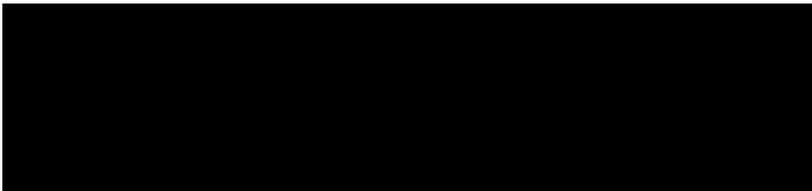
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FILE: WAC 03 245 50305 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is an accounting, payroll, and data processing firm. It seeks to employ the beneficiary as an accountant and to extend her classification 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 on the ground that the proffered position does not qualify as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a company with two employees and gross annual income of \$250,000 that provides accounting, financial statements, payroll and tax services to its clients, as well as expert witness and forensic accounting services in tax and civil litigation. The petitioner stated that it proposed to hire the beneficiary as a part-time accountant (20-30 hours per week) and described the duties of the position as follows:

[The beneficiary] will be responsible for the overall accounting and financial duties. She will handle the preparation of our company's general ledger, monthly and yearly financial reports. Furthermore, [the beneficiary] will monitor information systems regarding our company. She will compile and analyze financial information to prepare entries to our company's accounts. Moreover, she will detail our company assets, liabilities and capital.

Likewise, [the beneficiary] will advise and recommend to our management regarding tax strategies. She will further advise us on advantages and disadvantages of certain business decisions or transactions. In addition, [she] will be responsible for the accounting and inventory of the company's supplies. She will devise a financial system that will help our company establish a more systematic and smooth inventory procedure.

Moreover, [the beneficiary] will prepare our firm's balance sheets, profit and loss statements, necessary checks, payroll, tax remittances and other reports to summarize our company's current and projected financial position. She will also meet with our management and discuss accounting matters concerning financial matters.

Likewise, [the beneficiary] will modify and coordinate implementation of our accounting and accounting control procedures. Her duties will also include monitoring our budgeting, performance evaluation and assets management. Lastly, [she] will prepare our business letter correspondences with our existing and prospective clients regarding certain transactions, financing and billing statements.

[The beneficiary] . . . will apply her knowledge and expertise in the accounting field in order to cope with the backlog in our accounting department, and to provide the additional services that our business requires.

Documentation submitted with the petition showed that the beneficiary earned a four-year bachelor of science in business administration, with a major in accounting, from the University of the East in Manila, the Philippines, on May 6, 1980 and that she became a certified public accountant (CPA) in the Philippines on June 23, 1981. According to the petitioner, the beneficiary worked as an accountant for more than twenty years in the Philippines. The record shows that she entered the United States on a B-2 visa in April 2002, changed her classification to H-1B in December 2002 pursuant to a petition filed by Alpine Corporation in Paramount, California, and began working for Pay Plus 2000 around August 2003, when the instant petition was filed to extend the beneficiary's stay in H-1B status beyond the three-year period initially approved.

In response to the RFE the petitioner provided additional information about its business and the proffered position. The petitioner submitted some literature from the company website stating that the business was established in 1979 and provides its clientele with accounting, tax, and payroll services, specializing in the areas of:

- Preparing compiled, reviewed, and audited financial statements.
- Preparing fully electronic employees payroll checks, payroll quarterly reports, filing, remitting to IRS and EDD all requirements.
- Preparing and filing sales tax returns, city, county workers' compensation, etc.
- Preparing individual, partnership, LLC, LLP, S Corporation, C Corporation, and fiduciary income tax returns.
- Preparing amended income tax returns to claim net operating losses carry back or for correction of an error.

The petitioner submitted its federal income tax returns for 2001 and 2002, state and federal wage and tax statements for 2003, a list of its major clients, and an organizational chart showing three positions in the company. Those positions include a president, occupied by a U.S. citizen with a bachelor's degree in business administration; an operations manager, occupied by the president's father, who is a CPA and manages and coordinates the accounting and related services to clients; and the accountant position occupied by the beneficiary. The petitioner also stated that it had hired six accountants in the past, all of whom had bachelor's degrees in business administration or accounting and five of whom were CPAs.

In his decision the director found that while many of the duties of the proffered position appeared to reflect those of an accountant, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, the organizational chart showed that the petitioner already has a CPA performing accounting duties. The director noted that some of the duties of the proffered position involved accounting clerical and bookkeeping tasks and, considering the small size of the staff and the lack of an identified bookkeeping position, concluded that the beneficiary would actually be assisting the CPA by performing the duties of a bookkeeping, accounting, or auditing clerk, as described in the *Handbook*. Those positions, the director pointed out, do not qualify as specialty occupations. The director also found that the petitioner's business does not have the organizational complexity or scale of operations to warrant the hiring of a second accountant to be used exclusively in the review, analysis, and reporting of the petitioner's accounting records for the three-year period requested in the petition. The director determined that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the petitioner needs the beneficiary's services as an accountant – not as an accounting, bookkeeping, or auditing clerk – because the petitioner's business is the provision of accounting and related services to its clients. Only one other individual in the company – the operations manager – is an accountant, and he needs the assistance of an additional accountant to adequately service the company's clients and reduce his workload. Counsel emphasizes that the beneficiary does not provide in-house accounting services, but rather accounting services to outside clients. The beneficiary does not perform bookkeeping or other clerical functions, counsel states, because the petitioner utilizes its clients' own bookkeepers, accounting clerks, secretaries, and other administrative support staff for such purposes. The beneficiary provides specialized and complex accounting services, counsel contends, drawing on her baccalaureate coursework in accounting and over twenty years of experience in the

accounting field. The petitioner has a heavy workload, counsel concludes, and requires the part-time services of an additional accountant to keep up with demand. Counsel's brief is supplemented by a declaration from the petitioner's operations manager and CPA stating many of these same points.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO finds that the duties of the proffered position in this case accord with the *Handbook's* description of an accountant. That description reads, in pertinent part, as follows:

Accountants and auditors help to ensure that the Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time. They perform these vital functions by offering an increasingly wide array of business and accounting services to their clients . . . includ[ing] public, management, and government accounting, as well as internal auditing. Beyond the fundamental tasks of the occupation – preparing, analyzing, and verifying financial documents in order to provide information to clients – many accountants now are required to possess a wide range of knowledge and skills. Accountants and auditors are broadening the services they offer to include budget analysis, financial and investment planning, information technology consulting, and limited legal services

Handbook, 2004-05 edition, at 68. As further explained in the *Handbook* there are four major fields of accounting – public, management, government, and internal auditors – of which public accountant best describes the proffered position in this petition. As stated in the *Handbook*:

Public accountants perform a broad range of accounting, auditing, tax, and consulting activities for their clients, who may be corporations, governments, nonprofit organizations, or individuals. For example, some public accountants concentrate on tax matters, such as advising companies of the tax advantages and disadvantages of certain business decisions and preparing individual income tax returns. Others offer advice in areas such as compensation or employee healthcare benefits, the design of accounting and data-processing systems, and the selection of controls to safeguard assets. Still others audit clients' financial statements and report to investors and authorities that the statements have been correctly prepared and reported. Public accountants, many of whom are Certified Public Accountants (CPAs), generally have their own businesses or work for public accounting firms.

Id. Based on the entire record, including the documentation previously discussed and the petitioner's description of duties of the proffered position, the AAO determines that the beneficiary will be performing the services of an accountant. The *Handbook* goes on to state (at page 70) that most accountant positions require at least a bachelor's degree in accounting or a related field. The AAO concludes that the proffered position qualifies as a specialty occupation under the regulation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I).

As provided in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria 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.

As previously noted, the beneficiary earned a four-year bachelor of science in business administration, with a major in accounting, from the University of the East in Manila, the Philippines, on May 6, 1980. The AAO determines that the beneficiary is qualified to perform the services of the pertinent specialty occupation – an accountant – in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform services in that occupation.

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