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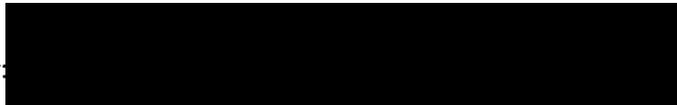


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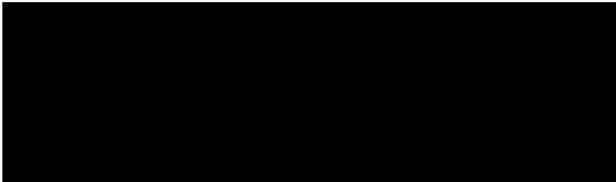
Date: **OCT 18 2005**

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:



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 The director's decision will be withdrawn.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 for the entry of a new decision.

The petitioner, a skilled nursing center for the elderly, seeks to employ the beneficiary as an auditor. The petitioner therefore filed this H-1B petition in order 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 determined, in part, that the proposed duties are similar to those of bookkeeping, accounting, or auditing clerks, and he denied the petition on the basis that the evidence of record does not establish that the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel takes exception to several aspects of the director's analysis, and counsel contends that the evidence of record establishes that the proffered position comports with the accountant and auditor occupational category as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which Citizenship and Immigration Services (CIS) recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.

The evidence of record substantiates counsel's contention that the petitioner has established that the proffered position is a specialty occupation. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief on appeal together with the attached documents.

The AAO concurs with counsel that the director erred to the extent that he based his decision on the following factors: the petitioner's "organizational complexity"; the absence of an accounting division, a bookkeeper, or bookkeeping, accounting, or auditing clerks; inclusion of bookkeeping and other non-auditing duties among the proposed duties; and the type of business in which the business engages. As discussed below, the AAO also finds that the petitioner has established that the proffered position and its duties require the application of a baccalaureate level of highly specialized knowledge in a specific specialty as required by the regulations that implement the H-1B provisions of the Act.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields 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 [2] 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. (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its January 15, 2004 letter of support that it submitted with the Form I-129 (Petition for Nonimmigrant Worker) the petitioner described the work to be done by the beneficiary as follows:

- (1) Conducts audit for management to assess effectiveness of controls, accuracy of financial records, and efficiency of operations: Examines records of departments and interviews workers to ensure recording of transactions and compliance with applicable laws and regulations;
- (2) Inspects accounting systems to determine their efficiency and protective value. Reviews records pertaining to material assets, such as equipment and buildings, and staff to determine degree to which they are utilized;
- (3) Analyzes data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud or lack of compliance with laws, government regulations, and management policies or procedures. Prepares reports of findings and recommendations for management;
- (4) Conduct[s] special studies for management, such as those required to discover mechanics of detected fraud and to develop control for fraud prevention. Audits employer business records for governmental agency to determine unemployment insurance premiums, liabilities, and employer's compliance with state tax laws;
- (5) Audits financial records to determine tax liability: Reviews information gathered from tax payer, such as material assets, income, surpluses, liabilities, and expenditures to verify net worth or reported financial status and identify potential tax issues; and
- (6) Analyzes financial issues to determine nature, scope, and direction of investigation required. Develops and evaluates evidence of taxpayer finances to determine tax liability, using knowledge of interest and discount, amenities, valuation of stocks and bonds, sinking funds, and amortization valuation of depletable assets.

Counsel's response to the RFE included detailed submissions regarding the petitioner's staffing and organizational structure, and a two-page description of duties and related percentages of work time. In combination with the record's information about the size and nature of the petitioner's business operations, the extensive evidence about the proposed duties substantiates the petitioner's contention that the proffered position comports with the auditor occupational category as described in the Department of Labor's *Handbook*, which CIS recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of

highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The information in the 2004-2005 *Handbook's* sections on Bookkeeping, Accounting, and Auditing Clerks (pages 437-438) and Accounts and Auditors (pages 68-72) indicates that the accountant and auditor occupations normally require the application of the highly specialized knowledge attained by at least a bachelor's degree in accounting or a related specialty, but that not all auditing and accounting tasks require such knowledge. Accordingly, in order to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) it was incumbent upon the petitioner to establish that the beneficiary's particular accounting or auditing work comports with a position for which employers normally require a person with at least a bachelor's degree or the equivalent in accounting or a related specialty. The petitioner has done so. The totality of evidence establishes that the petitioner is offering a position that substantially comports with auditor positions for which the *Handbook* reports that employers normally require at least a bachelor's degree in accounting or a related specialty.

Although the petitioner has satisfied the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petition cannot be approved. The evidence of record does not establish that the beneficiary has achieved education, training, and/or experience equivalent to at least a U.S. bachelor's degree in accounting or a related specialty. Therefore, the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). As the director has not addressed the issue of the beneficiary's qualifications, the petition will be remanded in order to allow him to determine whether the beneficiary has a baccalaureate degree in accounting or its equivalent.

The documentary evidence of record about the beneficiary's qualifications is limited to copies of: (1) the beneficiary's diploma reflecting a "Bachelor's in Accountancy" from the Polytechnic University of the Philippines, and (2) an official transcript of the beneficiary's coursework at the Polytechnic University. The petitioner's January 15, 2004 letter of support states that a foreign credentials evaluation is enclosed with that letter. However, the letter's list of enclosures does not include a foreign credentials evaluation, and no such evaluation appears in the record of proceeding.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹
- (4) Evidence of certification or registration from a nationally-recognized professional

¹ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . .

According to the express terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), to satisfy this CIS-determination criterion, a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision states:

[I]t must be *clearly demonstrated* [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation²;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

² *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

In light of the support letter's reference to a foreign credentials evaluation, to establish that the beneficiary is qualified, it appears that the petitioner is relying upon 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), "[a]n evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." However, as mentioned above, the record does not contain such an evaluation.

As CIS had not previously questioned the beneficiary's educational qualifications, the director must now issue a request for additional evidence on whether the beneficiary possesses the credentials specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The director must afford the petitioner reasonable time to provide evidence pertinent to this issue, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

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 May 7, 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.