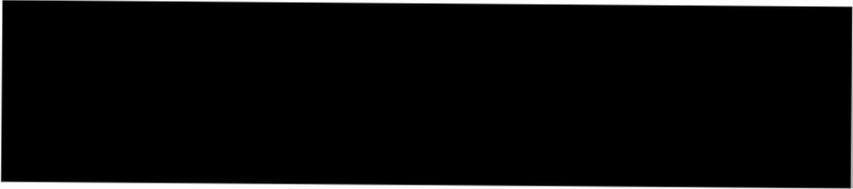




U.S. Citizenship
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Services

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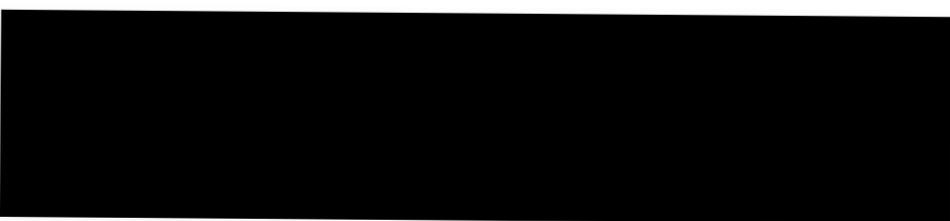
FILE: WAC 04 216 52465 Office: CALIFORNIA SERVICE CENTER Date: JUL 12 2006

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:



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. Wigmann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a pharmacy that seeks to employ the beneficiary as a part-time operations accountant and to classify him 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 basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed 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 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 operations accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the company's support letter; the petitioner's response to the director's

RFE; and counsel's brief on appeal. According to this evidence, the beneficiary would perform duties that entail, in part: providing accounting, auditing, profit, and cost analysis, and tax reporting, as well as preparing financial statements. The petitioner indicated that it required an individual who possessed a bachelor's degree with a major in accounting or its equivalent.

The director stated that many of the proposed duties reflect those of an accountant as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), but that sole reliance on duties resembling those of an accountant as that occupation is described in the *Handbook* is misplaced. The director discussed the *Handbook's* description of accountants, and stated that the petitioner does not have the organizational complexity, scale of business, or engage in the type of business to require the services of a part or full-time accountant. The director also found that the proposed duties more closely resembled those of a bookkeeper, not an accountant. The director stated that since the petitioner did not employ financial clerks, an occupation that does not qualify as a specialty occupation, the beneficiary would perform these duties. The director stated that the evidence is insufficient to show that the proposed duties could not be performed by an experienced person whose educational training falls short of a bachelor's degree. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that the petitioner's pharmacists and technicians, not the beneficiary, will perform basic bookkeeping and clerical tasks as each sale is made. Counsel asserts that, due to its high volume of business, the petitioner needs the beneficiary's part-time services to provide monthly analysis of cost and profit. Counsel asserts that the petitioner's tax returns, submitted in response to the RFE, establish the complexity of the petitioner's financial operations.

The AAO agrees that the record establishes that the proposed position is an accountant, and is a specialty occupation.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that the proposed position meets the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

An important factor CIS considers, to determine whether or not this criterion has been met, is whether the *Handbook* reports that the industry requires at least a bachelor's degree in a specific field of study. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for a management accountant, the field of accountancy most closely aligned with the proffered position, a bachelor's degree in accounting or a related field is required.

The AAO finds the record to establish that the duties of the proposed position as those of a management accountant and to require a bachelor's degree in accounting or a related field. The evidence establishes the petitioner as a business grossing more than \$3 million annually. While this level of income does not demonstrate that the performance of all of the duties described by the petitioner would be at the level of a degreed accountant, the AAO finds that, in a highly regulated industry with complex Medicare and Medicaid reporting and billing requirements, the position's tax-related and auditing responsibilities are of sufficient complexity to impose a bachelor's degree requirement in accounting or a directly related field on the

beneficiary. Therefore, the petitioner has established the proposed position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). The director's finding to the contrary is withdrawn.

The beneficiary passed the Uniform Certified Public Accountant (CPA) Examination in California, an examination that requires those taking it to have a bachelor's degree, 24 credit hours of accounting and 24 credit hours of business-related subjects.¹ He also possesses a master's degree in international affairs from the University of California San Diego and a bachelor's degree in economics from the [REDACTED] University in Seoul, Korea. The beneficiary is qualified to perform the duties of a degree accountant under 8 C.F.R. §214.2(h)(4)(iii)(C)(3).

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.

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

¹ California Board of Accountancy's *Uniform CPA Examination Handbook: First-Time Applicants*. This handbook can be accessed on the Internet at www.dca.ca.gov/cba/forms/exambk1.pdf.