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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

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FILE: LIN 04 180 50694 Office: NEBRASKA SERVICE CENTER Date: **JUN 19 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. Wiemann, Chief
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 owns and operates three restaurants. It reports a gross annual income of \$2.2 million and states that it employs 100 people. It seeks to employ the beneficiary as an accountant and endeavors 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with counsel’s brief. 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 Form I-129 petition with attachment, the petitioner’s response to the director’s request, and the petitioner’s statement on appeal. According to this evidence the beneficiary would:

- Provide accounting services for all three of the petitioner’s restaurants;
- Prepare monthly and annual financial statement filings, perform account reconciliations and assist with the general ledger and cash disbursements;
- Create the balance sheet, cash flow and income statements to predict future financial conditions and plan actions to influence future events;
- Evaluate major short and long-term financing outlays and liabilities;
- Analyze projects to determine cost benefit based on economic return and strategic considerations;
- Generate analysis that provides a true picture of current business standing and how this defines future business risks and opportunities;
- Review and verify the accuracy of journal entries and accounting classifications assigned to various records;
- Coordinate accounting matters with other departments, locations and outside CPA firm;

- Implement new accounting policies and procedures;
- Drive process improvements;
- Supervise the company bookkeeper and account receivable and human resource departments;
and
- Prepare tax returns and advise management about changes in tax law.

The petitioner requires a minimum of a bachelor's degree in accounting for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be those noted for accountants. The *Handbook* notes that management accountants record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Management accountants are usually part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. Management accountants also prepare financial reports for nonmanagement groups such as stockholders, creditors, regulatory agencies, and tax authorities. The petitioner indicated on the Form I-129 that its gross annual income was \$2.2 million and that it employed 100 people at three different restaurant locations. Evidence of record supports the petitioner's statements. A close review of the record establishes that the petitioner will employ an accountant who would perform the duties detailed by the petitioner in the operation of the petitioner's business. Those duties include the preparation and analysis of monthly financial statements (balance sheets, income and cash flow statements), which are relied upon by management in the operation of the petitioner's business, and the preparation of corporate tax filings based upon the petitioner's business operations. The beneficiary will also analyze the business operations of the three different business locations to determine the cost benefit on economic returns for management decision making. The nature and scope of the petitioner's business, and the duties detailed for the position relative thereto, establish that the duties of the proffered position are of such complexity that their performance requires the theoretical and practical application of a body of highly specialized knowledge. The *Handbook* notes that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. The proffered position does, therefore, qualify as a specialty occupation as it satisfies the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be considered is whether the beneficiary qualifies to perform the duties of a specialty occupation. The director did not comment on this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The beneficiary holds a master's degree in accounting from the University of Missouri-Kansas City. He is, therefore, qualified to perform the duties of the offered position.

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 petition is approved.