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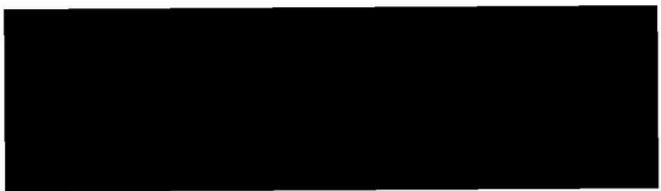


FILE: WAC 04 165 52374 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

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 documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 real estate investment and management company, with six employees at the time of filing, and a reported gross annual income of \$3.6 million. It seeks to extend its employment of the beneficiary as an accountant/financial analyst 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 he determined that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial; and (5) Form I-290B, with counsel's brief, and new and previously submitted documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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 petitioner seeks the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's April 15, 2004 letter of support; and counsel's October 15, 2004 response to the director's request. As described by the petitioner, the beneficiary, as its financial analyst would:

- Define risks in current and potential markets and projects;
- Abstract lease documents and prepare investment/financing packages for proposed acquisition and development projects;
- Analyze and interpret real estate and financial documents;
- Monitor and prepare financial analyses, including a tenant-by-tenant breakdown of all income and expenses associated with each property;
- Conduct comprehensive evaluations of projects proposed for acquisition and development;
- Perform comprehensive legal document analysis and review, including leases, vendor contracts, and acquisitions/disposition contracts; and
- Direct the actions of the agent in property management activities and coordinate with the eviction department and attorneys.

As its accountant, she would be required to:

- Prepare, enter and post statements to accounts; and process payroll, and accounts receivable and payable;
- Handle invoice and inventory transactions; prepare invoice statements and reconcile report discrepancies; conduct the calculation and recognition of contract revenue, accounts reconciliation, and analysis; and prepare monthly financial reports;
- Prepare sale reports, ensure billings to clients are proper and complete, and assist with audits of internal policies and procedures;
- Coordinate cash needs and usage, and provide forecasting analysis; and supervise all receipts, payment applications, credit and collection functions;

- Generate management reports and budget variance analysis; and assist the petitioner in directing accounting functions;
- Define policy objectives in the areas of capital financing, lease versus purchase, co-branding, net present value and risk analysis;
- Forecast monthly and annual revenue and expense budgets for all catering operations consistent with short and long-term operations and financial goals;¹ and
- Maintain cash forecast and prepare regional budget, review budget proposals and cost controls, and oversee required supporting documentation and justification.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director found the duties described by the petitioner to reflect some of those performed by accountants, but determined that the petitioner did not have the type of business to require the services of a full- or part-time accountant. The AAO finds the director to have erred in concluding that the petitioner does not operate the type of business that would require an accountant. The 2006-2007 edition of the *Handbook* indicates that accountants work throughout private industry and government, helping to ensure that the "Nation's firms are run efficiently, its public records kept accurately, and its taxes paid properly and on time."² It does not indicate that accountants are employed solely by public accounting, payroll services, and tax preparation firms; computer accounting systems, software developers, government agencies or academic institutions, as stated by the director. Accordingly, the petitioner's intention to employ an accountant may not be discounted based on its type of business. The AAO withdraws the director's findings in this regard.

The petitioner has stated that the proffered position is that of an accountant/financial analyst. To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the duties described by the petitioner. As stated by the *Handbook*, management accountants:

¹ The AAO notes that the reference to the petitioner's catering operations is not consistent with the petitioner's description of its business as a real estate investment and management company. Accordingly, the AAO will not consider this responsibility as one of the proffered position's duties.

² *Occupational Outlook Handbook*, 2006-2007 Edition, at page 70.

[r]ecord and analyze the financial information of the companies for which they work. Among their other responsibilities are budgeting, performance evaluation, cost management, and asset management They analyze and interpret the financial information that corporate executives need in order to make sound business decisions. They also prepare financial reports for other groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, management accountants may work in various areas, including financial analysis, planning and budgeting, and cost accounting. [*Handbook* at page 70]

The AAO also notes that the *Handbook* indicates that accounting responsibilities are evolving:

Increasingly, accountants also are assuming the role of a personal financial advisor. They not only provide clients with accounting and tax help, but also help them develop personal budgets, manage assets and investments . . . and recognize and reduce their exposure to risks. This role is a response to clients' demands for a single trustworthy individual or firm to meet all of their financial needs. [*Handbook* at page 71]

The AAO finds the above discussion to be reflected in the petitioner's description of the duties of the proffered position, specifically those related to its real estate activities. While the AAO notes the duties the petitioner has outlined as the position's accounting responsibilities, it finds them to be too generally described to establish the specific tasks the beneficiary would perform in relation to the petitioner's business activities. Accordingly, the AAO is precluded from determining whether these responsibilities would be of sufficient complexity to require the minimum of a baccalaureate degree in a directly related field, as required for classification as a specialty occupation. However, the financial analysis to be performed by the beneficiary regarding the petitioner's acquisition and development of real estate projects, and the management of its existing real estate assets establish the position as requiring a level of accounting/financial knowledge acquired only through a four-year degree in accounting or another directly related field. Accordingly, the petitioner has established the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The director's finding to the contrary is withdrawn.

The AAO now turns to the issue of whether the beneficiary is qualified to perform the duties of the proffered position.

To prove that a beneficiary is qualified to perform the duties of a specialty occupation, a petitioner must establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

At the time of filing, the petitioner submitted evidence to establish that the beneficiary holds a foreign degree that is the equivalent of a U.S. baccalaureate degree in accounting, as required to satisfy the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). This evidence includes copies of the beneficiary's diploma from De La Salle University in The Philippines documenting her 1993 bachelor of science degree in accountancy; the beneficiary's academic transcripts from this institution; and an evaluation of the beneficiary's educational credentials provided by Educational Assessment & Evaluation (EAE), Inc. in Athens, Georgia. The EAE evaluation finds the coursework taken by the beneficiary to provide her with the equivalent of a bachelor of business administration degree in accounting from an accredited university in the United States. Based on its review of the record, the AAO concurs in the EAE conclusion that the beneficiary holds the equivalent of a U.S. baccalaureate degree in accounting, a degree required by the proffered position. Accordingly, the petitioner has established the beneficiary's qualifications to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 met its burden.

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