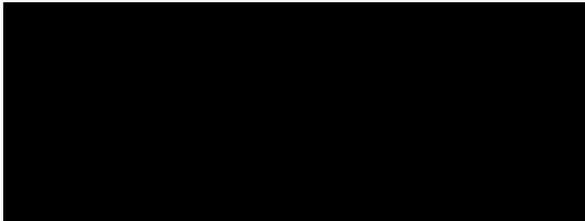


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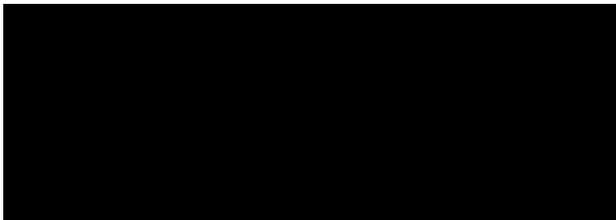
FILE: WAC 03 092 50367 Office: CALIFORNIA SERVICE CENTER Date: AUG 23 2005

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, Director
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 an apparel manufacturer that seeks to employ the beneficiary as a full-time accountant. The petitioner endeavors 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 denied the petition because the petitioner did not establish that the proffered position is specialty occupation. On appeal, counsel submits a brief.

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 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (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 accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: performing budget planning; performing cost accounting; performing financial analysis; preparation required for management and government reports; applying principles of accounting to analyze financial information and preparing financial reports; preparing compilation and analysis of financial information to prepare entries to accounts such as general ledger accounts; preparing documentation of business transactions; performing analysis of financial information detailing assets, liabilities, and capital; preparing balance sheets, profit and loss statements and other reports to summarize current and projected company financial positions; auditing contracts, orders and vouchers and preparation of reports to substantiate individual transactions prior to settlement; establishing, modifying, documenting and coordinating implementation of accounting and accounting control procedures.

The petitioner also stated:

Record keeping and analytical tasks will be completed on a daily basis. Quarterly and yearly reports are completed over a period of thirty days for quarterly reports, and sixty days for yearly reports. Record keeping of expenses, disbursements and general ledger are completed weekly and require about a day of attention a week. Account receivables are updated and reported at the end of week. Record keeping of accounting receivables requires approximately two days each week.

The petitioner indicated that the proffered position requires a bachelor's degree. The petitioner indicated that it has approximately 100 employees. The record indicates that the petitioner had gross sales or receipts of \$10,831,035 for tax year 2002 and paid \$1,259,482 for contract employees.

The director found that the proffered position was not a specialty occupation. The director noted that some of the duties of the position described by the petitioner appear to reflect some of those performed by accountants. The director noted that the petitioning entity is a business with operations the scale or complexity that would normally require the services of a full- or part-time corporate accountant who is part of the executive decision making team. The director determined that the petitioner's business would not utilize the beneficiary solely in the capacity of an accountant because the director concluded that the petitioner currently employed three other accounting professionals who could review and report on the company's financial records. Additionally, the director noted that the beneficiary's duties listed on the organizational chart did not include all of the duties listed in the petitioner's support letter. The director noted that the petitioner did not employ any bookkeepers, and/or accounting or auditing clerks and that some of the listed duties are bookkeeping duties. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel states that an accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. On appeal, counsel explains that the beneficiary will engage in the review, analysis, and reporting of the petitioner's accounting records based on the totality of her responsibilities. Counsel sufficiently differentiated the duties of the controller and the EDI

management and billing position from the duties of the proffered position. The petitioner has sufficiently described the duties of the proffered position in the context of its business.

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

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states that for an accountant, a bachelor's degree in accounting or a related field is required.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary has the equivalent of a bachelor's degree in accounting from an accredited university in the United States, indicating that she is qualified for this specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

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