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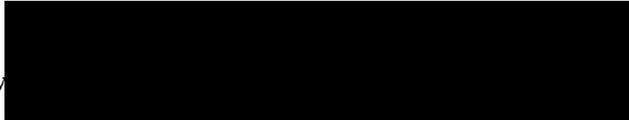
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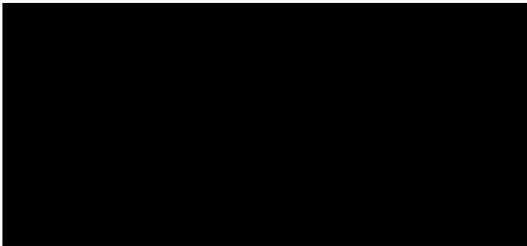
FILE: WAC 03 113 54661 Office: CALIFORNIA SERVICE CENTER Date: AUG 31 2005

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 director of the 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 provides home care services. It seeks to employ the beneficiary as a part-time accountant. The petitioner, therefore, 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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; 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 a part-time accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, analyzing, and verifying quarterly and yearly tax returns; performing audits; preparing the general ledger, payroll statements and deductions, monthly expense reports and financial statements, and monthly and yearly financial reports; monitoring information systems; compiling and analyzing financial information in order to prepare account entries; detailing assets, liabilities, and capital; providing tax planning advice; reviewing finances and current taxes and devising a long-range tax plan; recommending ways to reduce taxes; advising and recommending tax strategies, advantages, and disadvantages of business decisions or transactions; devising a financial system to establish an inventory procedure; preparing balance sheets, profit and loss statements, checks, payroll, tax remittances, and other reports to summarize the company's current and projected financial position; modifying and coordinating implementation of accounting and accounting control procedures; monitoring the budget, performance evaluation, and cost and asset management; preparing letter correspondence with clients regarding transactions, financing, and billing statements; analyzing transactions and preparing billing statements; and maintaining the computerized accounting system. The petitioner stated that the proposed position requires a bachelor's degree in accounting or a related field.

The director stated that some 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*). The director further stated that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. According to the director, the nature and complexity of the proposed duties and the nature of the petitioning entity are factors that are considered when determining whether a position qualifies as a specialty occupation. The director stated that performing incidental specialty occupation duties such as financial analysis, planning, budgeting, and cost accounting do not establish that the proposed position is a specialty occupation, and also stated that accountants do not perform duties that relate to maintaining accounting records. According to the director, the petitioner's organizational chart reveals that it employs a controller and five accounting positions, one at each business location; and that there is no bookkeeper or accounting or auditing clerk; thus, the director concluded that the beneficiary will perform the duties of these occupations, which are not specialty occupations. The director found an inconsistency in the evidence: the proposed position is titled "accountant," but the duties relating to bookkeeping and accounting are not those of an accountant. The petitioner does not engage in the type of business for which an accountant would be required for a significant length of time, the director stated. According to the director, the petitioner has operations that would normally require the services of a full or part-time corporate accountant that is part of an executive decision-making team; however, the director stated that the petitioner already employs four accounting professionals that may actually be performing bookkeeping and clerical accounting duties. The director stated that the evidence did not persuasively show that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the director's decision is conclusory, and is not based on the Act and regulations. Counsel asserts that the proposed position corresponds to an accountant as that occupation is described in the *Handbook*, *DOT*, and *Occupational Information Network (O*Net)*, and that the *Handbook* reveals that a baccalaureate degree in accounting or a related field is required for an accountant. The petitioner's size, counsel asserts, is irrelevant in determining whether a position is a specialty occupation. According to counsel, the director failed to consider all of the *Handbook's* information about accountants; specifically, that accountants maintain accounting records with accounting packages, and that an accountant's duties vary by industry, employer, and skill level. Counsel maintains that the petitioner is not required to employ a bookkeeper, accounting, or auditing clerk; that the proposed duties reflect those of an accountant, even though some are performable by bookkeepers or accounting clerks; and that financial analysis, planning, budgeting, and cost accounting are not performed by bookkeepers or accounting clerks. Counsel also states that the evidence has no inconsistencies; that all businesses employ accountants; and that the *Handbook* does not identify minor fields in accounting. According to counsel, payroll service firms employ accountants for payroll preparation. Counsel asserts that the petitioner is not required to demonstrate a need for the beneficiary for the entire three year H-1B period, and that the director has no authority to determine an employer's needs. Counsel states that the director erroneously interpreted the Act and regulations when he stated that the evidence is insufficient in showing that the actual duties could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree because a person can become an attorney without a bachelor's degree; yet this does not make the profession any less of a specialty occupation. CIS regulations, counsel states, show that a beneficiary need not possess a degree. Counsel states that the petitioner need not prove that it has previously hired an accountant.

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 not a specialty occupation.

The petitioner has established the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. When determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether a position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Here, based on the evidence in the record - the proposed duties and the submitted federal income tax records that disclose that in 2002 the petitioner had an income tax deduction of \$24,000 for accounting services - the proposed position resembles that of an accountant, which qualifies as a specialty occupation.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The evidence in the record reveals that the beneficiary is qualified for the proposed position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), a beneficiary's credentials may be equated to a U.S. baccalaureate or higher

degree based on 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. The submitted educational evaluation satisfies this criterion as the official from the university states that the beneficiary possesses the equivalent to a bachelor's degree in business administration with a major in accounting from a regionally accredited college or university in the United States.

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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.