

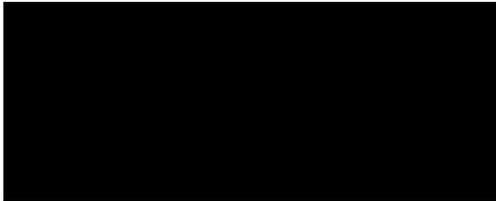
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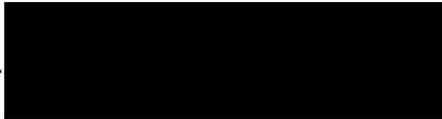
U.S. Citizenship
and Immigration
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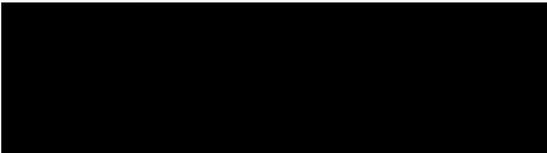
FILE: WAC 03 230 50514 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a golf tee time and corporate tournament coordination business. It seeks to employ the beneficiary as an accountant and to classify her 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 ground that the proffered position is not a specialty occupation. Based on the duties of the position, the director concluded that a majority of the beneficiary's time would be spent performing the tasks of a bookkeeper or accounting clerk, which does not qualify as a specialty occupation. On appeal counsel argues that the duties of the position are those of an accountant, and the position meets three different criteria of a specialty occupation under the applicable regulations.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, the appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

As explained in a letter accompanying its H-1B petition, the petitioner arranges golf tee times, corporate golf outings and tournaments for a diverse clientele at more than 85 golf courses in San Diego County. The petitioner seeks the beneficiary's services as an accountant, and listed the duties of the position in its letter as follows:

- Analyzes operations, trends, costs, revenues, financial commitments, and obligations incurred to project future revenues and expenses, using computer.
- Develops, maintains, and analyzes budgets, and prepares periodic reports comparing budgeted costs to actual costs.
- Analyzes records of financial transactions to determine accuracy and completeness of entries, using computer.
- Prepares balance sheet, profit and loss statement, amortization and depreciation schedules, and other financial reports, using calculator or computer.
- Reports finances of establishment to management, and advises management about resource utilization, tax strategies, and assumptions underlying budget forecasts.
- Develops, implements, modifies, and documents budgeting, cost, general, property, and tax accounting systems.
- Predicts revenues and expenditures, and submits reports to management.
- Computes taxes owed, ensures compliance with tax payment, reporting, and other tax requirements, and represents establishment before taxing authority.
- Surveys establishment operations to ascertain accounting needs.
- Establishes table of accounts, and assigns entries to proper accounts.

The petitioner indicated that a qualified candidate for the job must have a bachelor's degree in accountancy. The record indicates that the beneficiary earned a Bachelor of Science in Accountancy at St. Louis College in the Philippines on March 31, 2001 and began working as an accountant at Macabata de Guzman & Co. in Valenzuela City, the Philippines, on February 18, 2002. In a letter responding to the RFE, counsel amplified the description of the proffered position.

The director found that the position offered to the beneficiary more closely resembled that of a bookkeeping or accounting clerk, than that of an accountant. He based this finding on a comparison of the duties of the subject position, as described above, with the descriptions of bookkeeping/accounting clerks and management accountants in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. "From the description of the duties," the director declared, "it appears that a majority of the beneficiary's time will be spent performing bookkeeping/accounting clerk duties which . . . can be performed by an individual with less than an accounting degree." The director acknowledged that the position of accountant is recognized as a specialty occupation, requiring a bachelor's degree in accounting or a related field, but he determined that the duties and responsibilities of the proffered position do not have the complexity or scope of responsibility normally associated with an accountant. The *Handbook* indicates that a baccalaureate degree is not required for entry into the occupation of bookkeeping or accounting clerk in the United States, which is one criterion for qualification as a specialty occupation.

Nor was there evidence that the proffered position met any other criteria of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director concluded that the proffered position did not qualify as a specialty occupation under the Act.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

In his appeal brief counsel argues that the job duties of the beneficiary accord with the *Handbook's* description of an accountant. Counsel asserts that the unique nature of the petitioner's current business needs and its rapid growth justify the hiring of an accountant, not a bookkeeper or accounting clerk. Counsel points to the petitioner's need for an individual who can set up a computerized accounting system, manage the company's accounting control procedures, recommend tax strategies, and advise on certain business decisions and transactions. Counsel asserts that a bookkeeping or accounting clerk cannot perform all of those tasks.

The AAO agrees that the duties of the proffered position exceed those of a bookkeeper or accounting clerk in their complexity and level of authority. The petitioner's federal income tax return for 2002, the AAO notes, recorded accounting costs of \$73,225. The record also includes a letter to the petitioner from its outside tax preparer/accountant, dated April 21, 2003, enclosing the petitioner's financial statements and preliminary tax summaries for the previous year, noting that the company was growing at a rate of 8% annually, and advising that an in-house accountant be hired. The date of this letter preceded the instant petition by over three months.

The AAO finds that the duties of the proffered position, as outlined by the petitioner, reflect the duties of an accountant as described in the *Handbook*. Since a bachelor's degree in accounting or a related field is the normal industry-wide minimum requirement for entry into an accounting position, the AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

For the reasons discussed above, the director's decision denying the petition on the ground that the proffered position is not a specialty occupation must be withdrawn. Before the petition can be approved, however, it must be established that the beneficiary is qualified to perform the services of the specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). In this connection, the AAO notes that there is no credentials evaluation report in the record confirming that the beneficiary's bachelor of science in accounting from Saint Louis College in the Philippines is equivalent to a U.S. baccalaureate degree from an accredited college or university.

The petition will be remanded for the director to make a determination on this and any other issue relating to the beneficiary's qualifications to perform the services of the specialty occupation. The director must afford the petitioner reasonable time to provide pertinent evidence. The director shall then issue a new decision based on the evidence of record relating to the requirements for eligibility. As always, the burden of proof rests with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision of November 13, 2003 is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.