



U.S. Citizenship
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FILE: WAC 04 145 50933 Office: CALIFORNIA SERVICE CENTER Date: NOV 10 2005

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.

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 a fabric wholesaler that seeks to employ the beneficiary as a full-time internal auditor. 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 a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 internal auditor. 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:

establishing audit objectives, and audit plans based on standard audit principles; developing systematic audit engagements for periodic operational and financial audits; performing internal control evaluation, systems analysis, and operations audit; performing financial analysis; performing verification of financial transactions; performing variance analysis and determining tax liabilities; analyzing data processing and information systems, management procedures, and internal audit control to ensure that adequate control measures are in place; assessing work flow to determine possible duplication of work, discrepancies and source of waste or fraud or mismanagement; writing audit reports to document findings; developing internal control measures to promote operational efficiency, safeguard the company's assets, and prevent fraud. The petitioner indicated that the proffered position required a bachelor's degree in accounting or business administration.

In response to the director's request for evidence, the petitioner submitted its federal income tax return, which indicated gross receipts or sales of \$27,241,423, gross profit of \$3,641,916, salaries and wages of \$577,085 and commissions of \$867,357. The petitioner indicated that it had approximately 23 employees and approximately 15 contractors, who are the sales staff. The petitioner submitted an organizational chart, which indicated an accounting department, which included a budget analyst, senior accountant, cost accountant, general accountant, payroll accountant, and a bookkeeper.

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. However, the director noted that the petitioner's organizational chart indicated that it had four accounting positions and only one bookkeeper. The director found that this indicated that there are plenty of personnel to review and supervise, and there are not enough employees to actually perform the most basic accounting and clerical duties. The director found that the evidence failed to establish that the petitioning entity is a business with operations of the scale or complexity that would normally require the services of a full- or part-time accountant [sic]. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel states that an auditor is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an internal auditor. On appeal, counsel differentiates the duties of the proffered position from that of a bookkeeper. Counsel explains that the beneficiary will oversee the work of the bookkeeper but will not directly perform bookkeeping clerical tasks. Counsel explains that the petitioner is a fast growing textile importer and wholesaler and submits a list of clients, vendors and purchase orders to establish the volume of transactions. Counsel asserts that the petitioner needs the services of an auditor to assist it in improving and implementing a better operational and administrative system due to the increase in business transactions. Counsel explains that the petitioner has reviewed the option of contracting an auditor but that its needs would be better met by an in-house auditor. Counsel sufficiently differentiated the duties of the bookkeeper and 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 auditor, 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 or auditor, 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.