

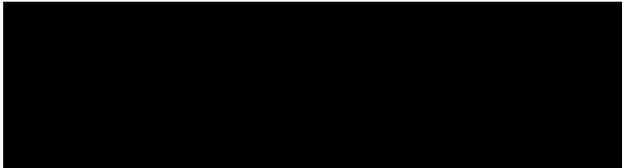
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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*Handwritten initials*  
Date: **OCT 08 2005**

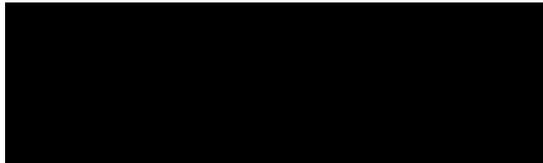
FILE: WAC 04 042 51846 Office: CALIFORNIA SERVICE CENTER Date:

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner distributes bronzes, furniture, and antiques from all over the world to big gallery stores, retailers, and interior decorators. It seeks to employ the beneficiary as a cost accountant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified for a change of status. On appeal, counsel submits a letter from the petitioner.

Pursuant to 8 C.F.R. § 248.3(g), there is no provision for an appeal from the denial of a change of status. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for a change of status, this issue will not be reviewed.

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 cost accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 17, 2003 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: developing, interpreting, and implementing financial cost accounting concepts for financial planning, budgeting, and general ledger applications; gathering, analyzing, preparing, and summarizing information for financial plans, operations, and budgets; designing and implementing an effective management information and control system; performing technical analysis to determine present and future finance performance; and overseeing the preparation of monthly financial statements and quarterly and year-end financial reports. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because the job is not an accountant position; it is a bookkeeper or accounting/auditing clerk position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states, in part, that the proffered position is a cost accountant, and is not a bookkeeper or accounting clerk position. The petitioner states further that the proposed duties, which entail developing, interpreting, and implementing financial cost accounting concepts for financial planning, budgeting, and general ledger applications, and gathering, analyzing, preparing, and summarizing information for financial plans, operations, and budgets, are so specialized and complex as to require the services of a cost accountant.

The proffered position is that of a cost accountant for the petitioning entity, which distributes bronzes, furniture, and antiques from all over the world to big gallery stores, retailers, and interior decorators, has nine employees and a gross annual income of \$3.2 million. A review of the *Handbook*, 2004-2005 edition, at page 70, finds that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. As such, the petitioner has overcome this portion of the director's objections. The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the duties of a specialty occupation. It is noted that the beneficiary's transcripts reflect his birth date as August 30, 1962. This date conflicts with the August 31, 1963 birth date that is reflected on the petition and in the beneficiary's passport. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to him for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.