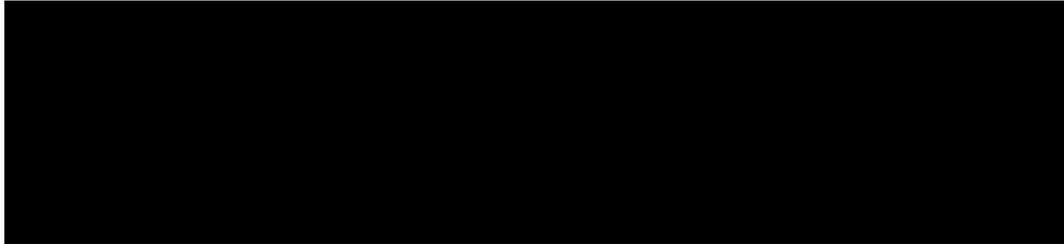




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**

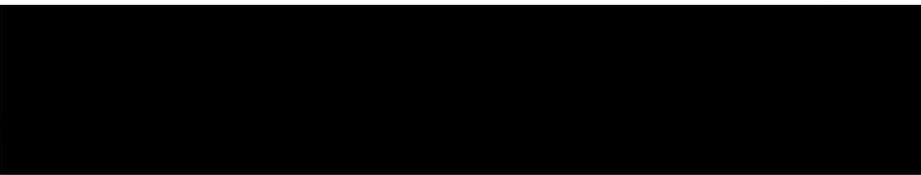
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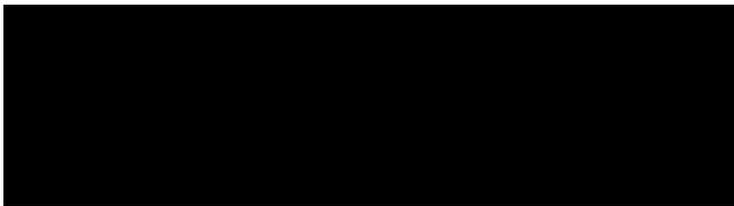
FILE: WAC 04 059 52445 Office: CALIFORNIA SERVICE CENTER Date: OCT 07 2005

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 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 is a food service and fast food chain that seeks to employ the beneficiary as an 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 on the ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 an 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 maintaining accounts payable, payroll, inventory, fixed assets and subsidiary ledgers using Peachtree accounting software; supervising subordinate accounting staff in processing payroll and invoices for payment, and recording sales and cash receipts; maintaining the general journal and recurring journal for month-end closings; preparing daily cash flow analyses and fund transfers; preparing monthly bank reconciliation; preparing the depreciation schedule of fixed assets; generating monthly financial statements and highly complex financial reports to parent company; conducting internal audits of inventory, fixed assets, paid invoices and payroll reports; and assisting corporate management in preparing company budgets, financial analysis of existing and new business ventures, and cost analysis to support managerial decisions on staff planning and new project development. The petitioner stated that the proposed position requires a bachelor's degree in business administration with a major in accounting.

The director stated that many 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*), and that sole reliance on duties resembling those of an accountant as described in the *Handbook* and the *Dictionary of Occupational Titles* (DOT) is misplaced. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the nature of the petitioning entity are factors that CIS considers, and that each position must be evaluated based on the nature and complexity of the actual job duties. The director stated that the beneficiary's obtaining a degree in a related area does not guarantee the position is a specialty occupation, and that performing specialty occupation duties that are incidental to the primary function does not establish that the proposed position qualifies as specialty occupation. The director found inconsistencies in the evidence as the proposed position is titled "accountant," but many of the proposed duties such as maintaining accounts payable, payroll, and the general journal are basic bookkeeping and accounting clerical duties that are not performed by accountants. The director discussed the holding and relevance of *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which discusses evidentiary inconsistencies. The director stated that the *Handbook* reports that bookkeeping, accounting, or auditing clerks do not require a bachelor's degree, and thus, they are not specialty occupations. The director stated that performing some incidental specialty occupation duties such as financial analysis, planning, budgeting, and cost accounting does not establish that the proposed position is a specialty occupation. The director found that although the proposed position requires some financial analysis, the actual duties to be performed are related to those of bookkeeping, accounting, or auditing clerks, positions that do not qualify as specialty occupations. There is no reasonable expectation, the director stated, that the petitioner would use the beneficiary solely in the capacity as an accountant or auditor exclusively in the review, analysis, and reporting of accounting records for the requested period. The director stated that the evidence did not 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 conceded that the proposed duties reflect those of an accountant as that position is described in the *Handbook*. Counsel states that the director misconstrued and misstated the petitioner's job description; unduly emphasized the incidental duties of maintaining accounts payable, payroll, and the general journal; and erroneously identified primary duties as incidental. Counsel asserts that the proposed position qualifies as a specialty occupation as CIS had previously approved a similar H-1B petition filed by the petitioner on behalf of the beneficiary. Counsel discusses the relevancy of the April 23, 2004 memorandum (Yates memo) issued by Mr. [REDACTED] Yates to the facts of the instant petition, and states that based on the Yates memo, the director should have given deference to the prior determination by the adjudicator. Counsel submits a letter from the petitioner and the Yates memo.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner has 249 employees; earns \$8,459,627 in gross annual revenue; operates 10 stores; and in the December 23, 2003 letter stated that it anticipates opening 10 stores in 2005, and 11 in 2006. Based on this context and the proposed duties, the AAO finds that the proposed position is similar to that of an accountant, which is a specialty occupation requiring a bachelor's degree in accounting or a related field.

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

The AAO will now address whether the beneficiary is qualified to perform the proposed position.

The *Handbook* indicates that employers require a bachelor's degree in accounting or a related field for an accountant. The beneficiary is qualified to perform the duties of the proffered position. The record contains a copy of the beneficiary's transcript and degree, a bachelor of science in business administration (with a major in accounting) from The University of the East, located in the Philippine Islands. The record also contains an educational evaluation from Josef Silny & Associates, Inc., International Education Consultants, which concluded that the beneficiary's studies are the equivalent of a U.S. bachelor's degree in business administration in accounting earned at a regionally accredited institution of higher education in the United States. Thus, based on the evidence in the record, the beneficiary is qualified for the proposed position.

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.

ORDER: The appeal is sustained. The petition is approved.