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U.S. Citizenship
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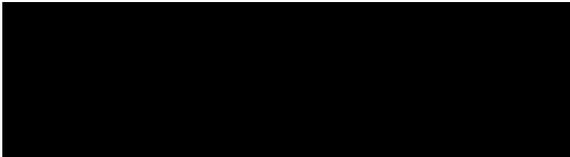
FILE: WAC 04 078 51603 Office: CALIFORNIA SERVICE CENTER Date: OCT 24 2005

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 The director's decision will be withdrawn.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

The petitioner is an appliance service and repair center, and seeks to employ the beneficiary as an 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 proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings before the AAO contains: (1) the 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an auditor. Evidence of the beneficiary's duties is set forth in the Form I-129 petition and supporting documentation. According to this evidence the beneficiary would:

- Conduct audits for management to assess the effectiveness of controls, accuracy of financial records, and efficiency of operations: examining records of departments, interviewing workers to ensure the accurate recording of transactions and compliance with applicable laws and regulations;
- Inspect accounting systems to determine their efficiency and protective value;
- Review records pertaining to material assets such as equipment and buildings and staff to determine the degree to which they are utilized;
- Analyze data obtained for evidence of deficiencies in controls, duplication of effort, extravagance, fraud or lack of compliance with laws, government regulations, and management policies or procedures;
- Prepare reports of findings and make recommendations to management;
- Conduct special studies for management such as those required to discover the mechanics of detected fraud and develop controls for fraud prevention;
- Audit employer business records for governmental agencies to determine unemployment insurance premiums, liabilities, and employer compliance with state tax laws;
- Audit financial records to determine tax liability;

- Review information gathered from the tax payer, such as material assets, income, surpluses, liabilities, and expenditures to verify the net worth of reported financial status and identify potential tax issues;
- Analyze financial issues to determine the nature, scope, and direction of any investigation required;
- Develop and evaluate evidence of taxpayer finances to determine tax liability, using knowledge of interest and discounts, amenities, valuation of stocks and bonds, sinking funds, and amortization valuation of depletable assets.

The petitioner requires a bachelor's degree in accounting for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for internal auditors. The record establishes that the petitioner is an authorized service center for numerous companies and has a gross annual income of approximately \$3,000,000. Its business involves a multitude of individual financial transactions which must be processed according to the particular terms of the service agreement under which the service is being performed. The work performed requires not only documentation for the individual customer, but must be properly documented and billed to the appropriate company who provided the product being serviced. The volume of financial transactions performed by the petitioner justifies the use of an auditor to ensure that its financial record keeping is in order and that its resources are being properly utilized. The *Handbook* notes that most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. The position is, therefore, a specialty occupation as it meets the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director did not determine whether the beneficiary is qualified to perform the duties of the proffered position as the petition was denied on another ground. The beneficiary has a Bachelor of Science degree in commerce from the Far Eastern University in the Philippines. Although the petitioner's letter of January 16, 2004 states that a credentials evaluation service has determined that the petitioner's degree is equivalent to a Bachelor of Science degree in accounting in the United States, and that a copy of that evaluation is enclosed with the letter, no such evaluation is contained in the record. As such, this matter must be remanded to the director to determine whether the beneficiary is qualified to perform the duties of the offered position. The director may request such additional evidence as he deems necessary in rendering his decision.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

WAC 04 078 51603

Page 5

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion which, if adverse to the petitioner, shall be certified to the AAO for further review.