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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 054 50599 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 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 was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a small accounting firm that seeks to employ the beneficiary as a full-time accountant. 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.

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 accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the December 5, 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, in part: preparing clients' payroll, withholding and payment of taxes; preparing financial reports and documents such as balance sheets, profit & loss statements (on quarterly and yearly basis), funds flow & cash flow statements and budgets; managing and coordinating of clients' bookkeeping and billing activities; interpreting of accounts and records to company management, as well as advising clients' top management in financial planning and budgeting. Additionally, the accountant will monitor clients' financial matters during the course of a fiscal year to ensure compliance with tax laws and regulations and to advise clients on alternative means of tax strategies, advantages and disadvantages of business decisions or transactions and possible additional deductions; providing tax planning advice; reviewing finances and current taxes of the clients and devising a long range tax plan and recommending ways to reduce taxes.

The petitioner indicated that it required an individual who possessed a bachelor's degree with a major in accounting or its equivalent.

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 bookkeepers. Therefore, the director determined that the proffered position is not a specialty occupation.

On appeal, counsel differentiates between the duties of the proffered position and those of a bookkeeper. Counsel states that the proffered position is that of an accountant at an accounting firm. Counsel explains that the primary functions of the position are analyzing, interpreting, advising and planning for the accounting firm's clients.

The AAO agrees that the record establishes that the proffered position is an accountant, 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, 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 beneficiary does not have a bachelor's degree from a United States university. The petitioner submitted an education and work experience evaluation that was prepared by an official who has authority to grant college level credit for training and/or work experience in the specialty at an accredited college or university which has a program for granting such credit based on an individuals work experience. 8 C.F.R § 214.2(h)(iii)(D)(1). The record reflects that the beneficiary has the equivalent of a bachelor's degree in accounting based on an experience and education evaluation, thus 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.