

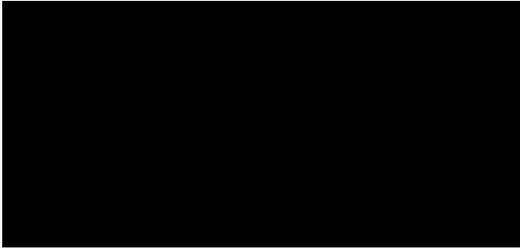
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U.S. Citizenship
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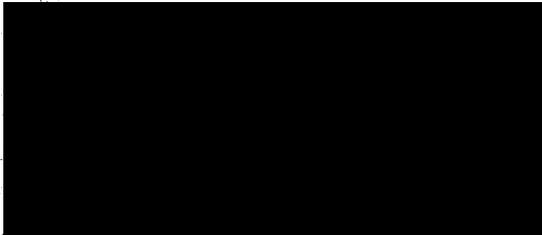
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FILE: WAC 03 066 52374 Office: CALIFORNIA SERVICE CENTER Date: OCT 31 2005

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 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 fabric importer and wholesaler that seeks to employ the beneficiary as a part-time 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 because 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 a part-time 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 preparing the general ledger and monthly and yearly financial reports; compiling and analyzing financial information; detailing company assets, liability, and capital; advising on business decisions or transactions; accounting and inventory of supplies; devising a financial system that will help establish systematic inventory procedures; auditing contracts, orders, and vouchers and preparing reports to substantiate individual transactions prior to settlement; and establishing, modifying, documenting, and coordinating implementation of accounting and accounting control procedures. The petitioner stated that the beneficiary qualifies for the proffered position based on her bachelor's degree in accountancy, which the International Education Research Foundation, Inc. found to be equivalent to a bachelor's degree in accounting awarded by regionally accredited colleges and universities in the United States, and her work experience.

The director concluded that the proffered position is not a specialty occupation. The director stated that some 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*), but 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 a 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 the general ledger are basic bookkeeping and accounting clerical duties that are not performed by accountants; and the director stated that a document describes the beneficiary as in-charge of accounts payable imports, processing of claims and payments, preparation of letter of credits and financial reports, and performing other matters related to imports. According to the director, a position is not a specialty occupation if the beneficiary performs accounting duties, as well as basic bookkeeping and accounting clerical duties. The director discussed the holding and relevance of *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), which discusses evidentiary inconsistencies. According to the director, without bookkeeping, accounting, or auditing clerks, many of those duties would be performed by the beneficiary. According to the director, the organizational chart reflects that the beneficiary would mostly function as a bookkeeping, accounting, or auditing clerk, and that these 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. The

director discussed the four fields of accounting, public, management, government, and internal; stated that the petitioner does not engage in the type of operation that typically requires the part or full-time services of an accountant; and distinguished the proposed position from that of a management accountant. The director stated that the petitioner already employs a controller and a credit and collection manager to review and report on financial records, and that these professionals may be performing bookkeeping and clerical accounting duties as the petitioner employs only three bookkeepers or accounting clerks. 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 found the job postings unpersuasive in establishing that the proposed position is a specialty occupation. 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; and that the petitioner did not have a past practice of requiring the services of an accountant with a bachelor's degree in a specific specialty.

On appeal, counsel states that the proposed position is a specialty occupation under the *Handbook* and the *Dictionary of Occupational Titles (DOT)*. Counsel states that the proposed duties are those of an accountant; the *Handbook* reports that accountants "record and analyze the financial information of the companies for which they work"; and the beneficiary will record and analyze financial information for the petitioner. Counsel discusses the petitioner's operations and revenue, stating that the petitioner requires the services of an accountant.

Upon review of the record, the petitioner has established that the proffered position is 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. As described by the petitioner and as reflected in the record, the petitioner is a fabric importer and wholesaler with 47 employees and over \$32 million in gross annual income for 2002. The beneficiary's duties resemble those 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 notes that the beneficiary is qualified to perform the duties of the proffered position. The record contains a copy of the beneficiary's transcript and bachelor in accountancy from Polytechnic University of the Philippines, and an educational evaluation from International Education Research Foundation, Inc., which concluded that the beneficiary holds the equivalent to a bachelor's degree in accounting awarded by regionally accredited colleges and universities in the United States.

The AAO notes that the director indicated in the denial of the extension request that the beneficiary appeared to be out of legal status at the time the petition was filed. The extension of status request is not before the AAO.

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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.