



U.S. Citizenship
and Immigration
Services

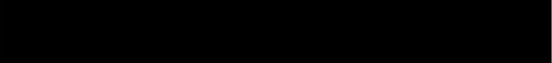
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FILE: WAC 04 256 51706 Office: CALIFORNIA SERVICE CENTER Date: **AUG 18 2006**

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, Chief
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 The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner is a wholesaler of health and beauty items and generic brand perfumes, was established in 1984, has 16 employees, and gross annual income of approximately \$ 22.5 million. It seeks to employ the beneficiary as a part-time budget 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 and additional evidence.

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 (RFE); (3) the petitioner's response to the RFE; (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 budget accountant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 23, 2004 letter in support of the petition; and counsel's March 8, 2005 response to the RFE. According to this evidence, the beneficiary would perform the following duties:

- Analyze records of present and past operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred to project future revenues and expenses, using computer software;
- Apply principles of accounting to analyze past and present financial operations and estimate future revenues and expenditures to prepare budget;
- Maintain budgeting systems which provide control of expenditures made to carry out activities, such as advertising and marketing;
- [Document] revenues and expenditures expected and submit to management;
- Advise management on matters such as effective use of resources and assumptions underlying budget forecasts;
- Interpret budget to management;
- Prepare cash flow projection and analyze past records, including sales and collection reports;
- Develop and install manual or computer-based budgeting system; and
- [Analyze] accounting records to determine financial resources required to implement program[s] and submit recommendations for budget allocations.

The petitioner indicated that it required a bachelor's degree or higher in accounting or a related field.

The director found that the proffered position was not a specialty occupation. Although the director concluded that the duties of the position described by the petitioner appear to reflect many of those performed by accountants, he was not convinced that the beneficiary would not be performing the duties of a nonspecialty occupation incidental to those of an accountant. The director noted that according to the organizational chart, the petitioner employs three accountants and only one bookkeeper, a ratio he found to be unrealistic. The director further noted that one of the accountants, previously approved for H-1B status as a specialty occupation, appears to be performing the duties of an accounts receivables clerk, a position that is not a specialty occupation.

On appeal, counsel states that a budget accountant is a specialty occupation and that the petitioner submitted adequate evidence to establish its need for an accountant. Counsel points to the petitioner's expanding business necessitating a budget accountant to ascertain the financial status of the company and to recommend, develop and maintain solutions to business and financial problems.

Upon review of the record, the petitioner has established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) - a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The position is closely aligned to that

of a management accountant, as discussed by the Department of Labor's 2006-2007 *Occupational Outlook Handbook (Handbook)*. The AAO routinely relies on the *Handbook* for information regarding the duties and educational requirements of particular occupations. The *Handbook* states that for a management accountant, a bachelor's degree in accounting or a related field is normally required. Therefore, the proffered position of management accountant is established as a specialty occupation.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petition may not be approved however, as the record does not establish that the beneficiary is qualified to perform services in a specialty occupation, as required at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), 8 C.F.R. § 214.2(h)(4)(iii)(C).

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (5) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

No evidence has been submitted to establish that the beneficiary holds a U.S. degree in the specialty or a foreign degree equivalent to a U.S. degree in the specialty.

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which

has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

To establish the beneficiary as qualified to perform the duties of a specialty occupation, the petitioner has submitted a copy of a degree issued to the beneficiary, together with his official transcripts from the University of San Carlos in the Philippines. The degree certificate states that the beneficiary was issued a Bachelor of Science degree in accounting. However, the record does not contain the equivalence evaluation required to establish the beneficiary's foreign degree as equivalent to a U.S. degree under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The AAO notes that the record does not contain any other information pertaining to beneficiary qualifications.

As the director did not consider the beneficiary's qualifications in reaching his decision, the petition will be remanded.

For reasons related in the preceding discussion, the director's decision will be withdrawn and the matter remanded for entry of a decision as to whether the beneficiary qualified to perform the duties of a degreed accountant. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the specialty occupation. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's April 4, 2005 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.