

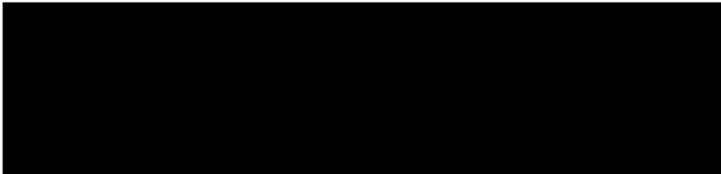


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 045 52620 Office: CALIFORNIA SERVICE CENTER Date: **FEB 24 2006**

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:
[Redacted]

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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director 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 manufacturer, importer, wholesaler, and distributor of furniture that seeks to employ the beneficiary as an accountant/financial analyst. 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 basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 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 proposed position.

The petitioner, a manufacturer, importer, wholesaler, and distributor of furniture with 80 employees, was established in 1988 and has a gross annual income of \$116 million. It proposes to hire the beneficiary as an accountant/financial analyst. In his July 16, 2004 response to the director’s request for evidence, previous counsel stated that the duties of the proposed position would involve setting up and maintaining business accounts; reviewing accounting and sales records; auditing sales transactions and expenses; analyzing and compiling data involving financial income and expenses to assist the outside C.P.A. in preparing tax compliance documentation; analyzing the financial health of the petitioner; computing operation costs and expenses; detailing assets, liabilities, profits, and losses; reviewing and analyzing the financial conditions and credit histories of affiliated businesses; determining whether to extend sales on credit; compiling financial statements and balance sheets; and maintaining general and separate ledgers.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a bookkeeper or accounting and auditing clerk.

On appeal, counsel offers additional information regarding its company and the proposed position. Counsel asserts, and submits evidence to demonstrate, that the petitioner has a large accounting department. In addition to an accounting manager and the position proposed here, the accounting department consists of two bookkeepers, one employee who works solely with accounts receivable, one employee who works solely with accounts payable, and one employee who works with both accounts receivable and accounts payable. The petitioner also employs a credit manager, a credit specialist, and a collection clerk in the department. These employees are responsible for entering accounting data, thereby overcoming the director’s concern that the beneficiary would be performing simple data processing functions. While some of the duties of the proposed position may reflect those of bookkeeping, accounting, and auditing clerks, the majority are those normally performed by accountants, and the AAO agrees with counsel that the proposed position is that of an accountant.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The totality of the evidence in this proceeding, including detailed information and documentation regarding the proposed duties, the petitioner’s business operations, and the petitioner’s organizational structure, establishes that the proposed position is that of a management accountant as described in the

Handbook. According to the *Handbook*, such a position requires a bachelor's degree in accounting or a related specialty. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record reflects that the beneficiary earned a bachelor's degree in business administration from the University of Oklahoma in 2000. The AAO notes that the beneficiary's education experience at the University of Oklahoma concentrated on the areas of accounting and finance. Therefore, she is qualified to perform the duties of this specialty occupation

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the director's order will be withdrawn and the petition approved.

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.