

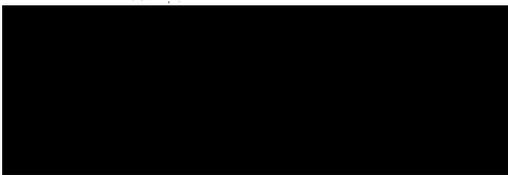
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: WAC 03 255 52742 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 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, 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 provides international freight forwarding and logistics services. It seeks to employ the beneficiary as an 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.

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 an 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 financial statements and custom reports for internal and managerial use; providing full-charge bookkeeping services including the general journal and ledger, bank statement reconciliation, and tracking and analyzing accounts receivables and accounts payables; performing cash flow and budgeting analysis to minimize cost overruns, lost purchase discounts, and uncollectible receivables; providing compilation, review, and audit services to optimize business operations; providing counseling services to help improve business operations, boost efficiency, and increase the bottom line; and monitoring federal, state, and local tax law changes to allow the company to minimize current and future tax liabilities. For the proposed position the petitioner requires a bachelor's degree or its equivalent in accounting, business, or a related discipline.

The director stated that many 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 that occupation is 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. The director discussed the *Handbook's* description of a management accountant, and stated that the petitioner does not have the organizational complexity, scale of business, or engage in the type of business to require the services of a part or full-time accountant. The director found that the beneficiary would not be used exclusively to review, analyze, and report on accounting records, and that the proposed duties more closely resembled those of bookkeeping, accounting, or auditing clerks. The director stated that the evidence is insufficient to show that the proposed duties could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. The director concluded that the petitioner failed to establish any of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director failed to properly consider the submitted evidence, and did not describe the proposed duties and compare them to the *Handbook's* depiction of a management accountant, which counsel claims is similar to the proposed position. Counsel asserts that the director did not describe the scale or complexity of operation that would require the services of an accountant. According to counsel, the petitioner has required baccalaureate degrees for employment in the proposed position and that this requirement is common in the industry.

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 first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) requires that a petitioner establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The petitioner is a subsidiary of Molax Line Ltd., one of the largest consolidators in Korea. In an August 24, 2003 letter the petitioner states that it is engaged in international freight consolidation, providing a wide range of less than container load (LCL) and full container load (FCL) freight forwarding and logistics services. The record contains evidence of company brochures reflecting that the petitioner provides freight forwarding service from several U.S. locations to and from Korea and offers eight kinds of containers; an organizational chart showing that the petitioner has four employees; DE-6 forms, with one of the forms showing four employees for the quarter ending March 31, 2004; invoices reflecting sales for the month of April 13, 2004; and Form 1120, indicating gross receipts or sales of \$1,100,418. In light of the submitted evidence, the AAO finds that the proposed duties resemble those of an accountant as that occupation is depicted in the *Handbook*.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO will now address whether the beneficiary is qualified for the proposed position.

The record contains the beneficiary's transcript and bachelor's degree in business administration from Myong Ji University; a certificate showing that the beneficiary completed a one year training course in the graduate school of business administration from Korea University; and an educational evaluation from Morningside Evaluations and Consulting indicating that the beneficiary's bachelor's degree and certificate are the equivalent of a U.S. bachelor's degree in business administration with a concentration in accounting from an accredited institution of higher education in the United States. Based on this evidence, the beneficiary is qualified to perform the proposed position.

The burden of proving eligibility for the benefit sought remains entirely 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.