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**U.S. Citizenship
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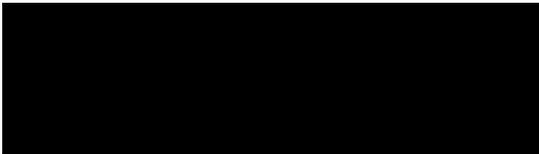
FILE: WAC 04 132 51337 Office: CALIFORNIA SERVICE CENTER Date: JAN 20 2006

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
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 an ocean freight shipments transportation company that 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 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).

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 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.

The petitioner, an ocean freight shipments transportation company with 25 employees, was established in 1994 and has a gross annual income of \$12 million. It proposes to hire the beneficiary as an accountant. In the petitioner's March 30, 2004 letter of support, the petitioner stated that the duties of the proposed position would include preparing and analyzing the corporate financial reports and pertinent documents for management and/or outside entities/agencies to review; preparing and maintaining corporate balance sheets and profit and loss statements which will reflect corporate assets and liabilities; preparing, maintaining, and analyzing financial information to estimate future operation revenues/expenditures; analyzing and preparing detailed costs, the annual budget plan, cash flow statements, and monthly variance analysis; setting up classification of accounts and organizing the company's accounting procedures; devising forms and preparing manuals required to guide accounting activities; and preparing statements for foreign agents to balance and convert foreign currency.

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 bookkeeping, accounting, or 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 contracts with an outside accounting service to enter accounting data, thereby overcoming the director's concern that the beneficiary would be performing simple data processing functions. The remaining clerical accounting duties are performed by customer service and documentation personnel: the petitioner has redesigned its operations system to allow such personnel to enter any remaining data into its accounting system. 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)(1).

The record reflects that the beneficiary earned a bachelor's degree in business administration, with a major in accounting from the University of Wisconsin in 2003, so 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.