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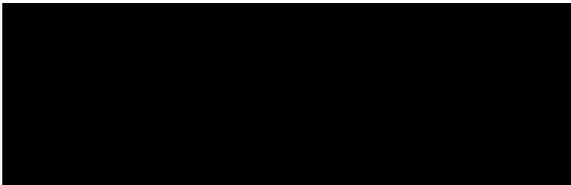


FILE: EAC 04 241 53145 Office: VERMONT SERVICE CENTER Date: JAN 30 2006

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:



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 The director's decision is withdrawn and the petition remanded for entry of a new decision.

The petitioner is an overseas courier and newspaper publisher. It 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 ground that the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted 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 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 under the close supervision of senior staff that entail analyzing financial information and preparing financial reports; inspecting items in the book of original entry to determine if they accord with proper accounting procedures; advising management on the use of resources and assumptions underlying budget forecasts; engaging in the cash application process such as accounts payable, accounts receivable, asset management, the general ledger, bank reconciliation, verifying invoices, requisitions, billing, and accounting; reviewing contracts, orders, and vouchers and preparing reports to substantiate individual transactions; supporting payroll functions; reviewing accounting records to assess the effectiveness of controls, accuracy of financial data, and operational efficiency; compiling and analyzing financial information to prepare entries to accounts and generate financial statements; establishing, modifying, documenting, and coordinating implementation of financial and accounting control procedures; discussing potential accounting problems and financial concerns with senior staff; and assisting in administration and troubleshooting of accounting and financial information systems and the network. The petitioner requires a bachelor's degree or its equivalent in a relevant field for the proposed position.

The director stated that the proposed duties reflect those of a bookkeeping, accounting, auditing, and/or financial clerk as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that those occupations require only a high school diploma. The director stated that CIS does not rely on a position's title or possible perfunctory educational requirements in deciding whether a position qualifies as a specialty occupation. When determining whether a position qualifies as a specialty occupation, the director stated that the specific duties combined with the petitioning entity's operations are factors that CIS considers. According to the director, the petitioner failed to show how the proposed position is germane to its operations. The director discussed the beneficiary's qualifications for an accounting/financial analyst position.

On appeal, counsel asserts that the petitioner requires a degree, or its equivalent, in a related field for employees holding the same or similar positions, and lists the names of the employees and their respective degrees. Counsel contends that the proposed position qualifies as a specialty occupation under the fourth criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A): the petitioner earned \$35,405,312 in gross income in 2003 and has complex international operations. Counsel states that the petitioner employs five bookkeeping, accounting, and financial clerks at the corporate headquarters in New York. Counsel discusses the beneficiary's qualifications for the proposed position.

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's financial statements reflect revenue of \$35 million for the year ended March 31, 2004 and employment of 230 persons in the United States. The labor certification application indicates that the beneficiary will be located at the corporate headquarters in New York. 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*. Thus, 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 *Handbook* indicates that a bachelor's degree in accounting or a related field is appropriate for an accountant, which the proposed position resembles. The record contains the beneficiary's transcript and associate degree in applied sciences in automated accounting applications from Tacoma Community College in Seattle, Washington; an educational evaluation from [REDACTED] a certificate in bookkeeping systems; and a September 24, 2004 letter describing certificates granted by the beneficiary's former employer and a July 21, 2004 letter from the same employer delineating the beneficiary's employment history.

The AAO finds that the petition may not be approved as the evidence contained in the record is insufficient to demonstrate that the beneficiary holds the equivalent of a bachelor's degree in accounting or a related field, which is required for the specialty occupation – an 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 an accountant, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. 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 September 2, 2004 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.