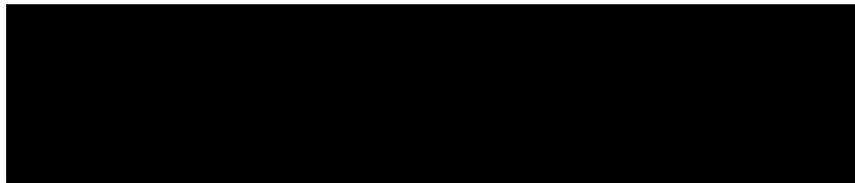


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**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 04 199 53362 Office: CALIFORNIA SERVICE CENTER Date: **MAY 10 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center 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 telecommunications provider that seeks to employ the beneficiary as an 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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; (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 I-129 petition; the petitioner's July 2, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: maintaining and controlling an advanced accounting operation; strategically planning and forecasting for the financial health of the organization; auditing the various accounts and report to the IRS on both a quarterly and annual basis; recommending improvements and consulting with the petitioner's treasurer and CPA firm to ensure compliance with established legal, regulatory and organizational bylaws; assisting the support staff to ensure accurate internal and external recording and reporting of financial transactions; overseeing budgeting, general ledger, accounts payable/receivable, payroll and fixed asset management; overseeing the national budget; overseeing monthly reporting and record keeping; being responsible for overall financial management; and managing all aspects of the finance department including payroll, audited financial statements, benefits administration, investment strategies, strategic planning, forecasting and financial accounting. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in accounting.

The director found that the proffered position was not a specialty occupation because the position is that of a bookkeeper or accounting clerk.

On appeal, counsel provides a statement from the petitioner's treasurer stating that she often requires the accountant to provide comparative analyses of profit and loss statement periods, budget analyses and cash flow analytical projections. The treasurer also states that the petitioner's budget has steadily increased, its programs have expanded and its services have increased. Counsel states that the director's determination that the petitioner did not have the organizational complexity to require the services of an accountant is incorrect and an abuse of discretion. Counsel asserts that the director was incorrect when he stated that even though the proffered position includes financial analysis and the preparation of financial reports, those duties would be incidental to the duties that would typically be performed by a bookkeeper. Counsel asserts that the director acknowledged that many of the duties of the proffered position were those of an accountant, and that an accountant position is a specialty occupation. Counsel states that the director's determination that the petitioner is not the type of business that would need an in-house accountant is based on conjecture rather than fact.

The AAO agrees with counsel that a position as an accountant is generally a specialty occupation and that the proffered position is an accountant.

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 AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The petitioner is a non-profit association that reports a gross annual income of approximately \$2 million, and a high volume of transactions servicing the needs of its 10,000 members. The evidence of record establishes the proffered position as that type of accounting position for which the *Handbook* reports that a bachelor's degree in accounting or a related specialty is a normal minimum hiring requirement. Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The beneficiary has a bachelor's degree in economics from a foreign college, which a credentials evaluation company determined was equivalent to a bachelor's degree in economics from a United States university. The beneficiary is qualified to perform the services of an accountant.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.