



U.S. Citizenship
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FILE: WAC 04 060 50573 Office: CALIFORNIA SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is presently before the AAO on a motion to reopen and reconsider its decision. The motion is granted. The decision of the AAO is withdrawn. The appeal will be sustained, and the petition will be approved.

The petitioner is a wholesale and retail warehouse for candy, grocery, and tobacco sales that seeks to employ the beneficiary as a full-time 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 (Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner did not establish that the proffered position is a specialty occupation under any of the criteria set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). On comparing the evidence of record with the information on the accountant occupation in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director found that petitioner had not established that it had the "organizational complexity" to require the services of an "in-house or private accountant." In particular, the director found that the petitioner's organizational structure and the educational credentials of its executive decision-making team were not compatible with the management accountant occupation as described in the *Handbook*. Also, the director determined that the beneficiary's duties amounted only to those of a bookkeeping or accounting clerk. As noted on appeal, the director did not address the three-page letter from a Certified Public Accountant (CPA) that opined that the petitioner's business operations required the services of an in-house "accountant with a Bachelor's degree to effectively direct accounting activities as described in the job description for this position."

The AAO dismissed the appeal on the following grounds: inconsistency between the proffered position and the *Handbook's* descriptions of management accountants and public accountants; discrepancy between the number of employees stated on the Form I-129 and listed on a quarterly wage and withholding report; and a lack of clarity with regard to the supervisory relationship between the petitioner's accountant and a person that the organizational chart identifies as holding two positions in the petitioner's hierarchy, one above and one below the accountant. The AAO discounted the CPA's opinion for lack of supporting evidence. The petitioner filed a motion to reopen and reconsider with supporting evidence. The motion is granted.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which [1] 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 [2] 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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In this regard, it is erroneous to assume that a petitioner establishes a specialty occupation by merely showing that the proffered position requires the application of accounting knowledge. The information on accounting related occupations presented in the 2006-2007 *Handbook* sections on accountants and auditors (pages 70-74) and bookkeeping, accounting, and auditing clerks (pages 434-435), establishes that there are many related

positions that require knowledge and application of accounting principles, but not on a level attained by at least a bachelor's degree, or its equivalent, in accounting or a related field. Examples in the *Handbook* are bookkeepers, full-charge bookkeepers, accounting clerks, auditing clerks, junior accountants, and accountant positions performed by persons without a bachelor's degree. If an H-1B petition asserts that the proffered position is that of an accountant, the supporting evidence must establish that the level of specialized knowledge necessary to perform the position is at least a bachelor's degree in accounting or a related specialty.

The record copies of the petitioner's IRS Form 1120-S (U.S. Income Tax for an S Corporation) for the years 2001 and 2002 show, respectively, gross sales of \$18,400,841 and \$15,916,455, and gross annual profits of \$922,131 and \$982,489, respectively. Among the matters submitted on motion is a three-page letter from a professor of finance at an accredited U.S. university, which endorses the previously submitted CPA opinion and opines that the proffered position requires a bachelor's degree.

The AAO finds that the petitioner has overcome the director's grounds for denial of the petition. The petitioner has also overcome the grounds upon which the AAO dismissed the appeal. While the evidence of record does not conform exactly to the description of *Handbook's* description of management accountants, that description is not meant to encompass all in-house accountant positions. The petitioner has adequately addressed the number-of-employees discrepancy between the Form I-129 and quarterly wage and withholding report. The petitioner has sufficiently clarified its supervisory relationships to show that the beneficiary's work would not be controlled by the person serving as both assistant manager and accounts receivable clerk. The opinions of the CPA and the finance professor are probative, as their letters establish that the opinions are based upon the application of expert knowledge to relevant information about the requirements of the proffered position in the context of the petitioner's operations.

As supplemented on the motion for reconsideration, the totality of the evidence about the proposed duties and the accounting requirements for the petitioner's business operations is sufficient to establish that the proffered position is one that normally requires at least a U.S. bachelor's degree, or the equivalent, in accounting or a related specialty. Therefore, the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into this particular position. Accordingly, the AAO's decision will be withdrawn. The appeal will be sustained, and the petition will be approved.

As the evidence of record also establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in business administration and accounting, with a specialization in accounting, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

ORDER: The AAO's decision of August 9, 2005 is withdrawn. The appeal is sustained. The petition is approved.