

...related to  
...clearly interpreted  
...of persons...

U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



DI

FILE: WAC 02 204 54134 Office: CALIFORNIA SERVICE CENTER Date: AUG 19 2005

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:  
[Redacted]

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.

*Michael T. Kelly*  
For 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 dismissed. The petition will be denied.

The petitioner, a residential care facility for the elderly, seeks to employ the beneficiary as its preventive maintenance coordinator. The petitioner therefore filed this H-1B petition in order 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 determined that the position comports with a combination of the occupational categories of building inspector and property manager as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, which Citizenship and Immigration Services (CIS) recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. The director denied the petition on the basis that such a position does not meet the requirements of a specialty occupation.

On appeal, counsel asserts that the director erred in classifying the proffered position as an amalgam of building inspector and property management duties. According to counsel, the duties of the proffered position "closely resemble/parallel those of Industrial and Safety and Health Engineers" as described in DOL's *Occupational Information Network (O\*NET)* under the O\*NET code 17-2111.01. Counsel contends that the evidence of record establishes that the proffered position is a specialty occupation.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means 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. (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Its brochure describes the petitioner as a .75-acre facility site, with 3,000 square feet of living area. According to the pamphlet, the facility has an electronically controlled entry and the following systems: video monitoring, burglar alarm, fire alarm, controlled lighting, internal communication, and centralized heating and air conditioning. The facility includes a sunroom for activity programs, and it has a “spacious yard for sports and recreation.”

The evidence of record indicates that the beneficiary would not supervise any employees, but that she would coordinate with contractors working on the facility.

The petitioner's March 21, 2003 letter of response to the RFE identified the following as the beneficiary's "two major tasks with corresponding percentage of time allocated to each task":

**FACILITY ANALYSIS, DESIGN AND SAFETY (80%)**

- Inspects and analyzes newly acquired building facility to determine upgrades, renovations, equipment to be reinstalled to comply with local building codes and state regulations
- Prepares detailed report of non-complying portion of the facility and proposes plan or design to update and conform to local building codes and state regulations
- Monitors and evaluates existing equipment [on the] premises to ensure compliance with state regulations
- Responsible for safety issues related to buildings or grounds, including fenced pools, maintenance, lighting, heating, cooling, and required phone or signal system
- Coordinates with state regulators to ensure modification compliance/permitting
- Maintains regulatory relationships with the Office of Regulations Development

**MAINTENANCE COORDINATION (20%)**

- Plans and coordinates schedule of preventive maintenance of facilities; records maintenance problems to determine optimum frequency of preventive maintenance
- Studies operation schedules and confers with other staff to determine when planned maintenance will [e]ast interfere with operation of facility
- Directs and coordinates activities of any hired maintenance contractors.

The AAO has considered the above and all the additional information that counsel and the petitioner have provided about the proffered position and its duties, including the statements in the Form I-129 and its addenda; the petitioner's May 17, 2002 letter of support that was submitted with the Form I-129; and the brief in support of the appeal. The evidence of record does not support the petitioner's assertion (at page 3 of its letter responding to the RFE) that the proffered position requires a bachelor's degree in civil engineering or a related field of study.

For the following reasons, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) by establishing that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties.

The following description of tasks from the section of the *O\*NET* on the industrial and safety engineer occupation reveals that counsel is incorrect in asserting that the duties of the proffered position substantially comport with (“resemble/parallel”) those of industrial and safety engineers, who obviously work in a materially different environment than the petitioner’s facility and its grounds:

- Devises and implements safety or industrial health program to prevent, correct, or control unsafe environmental conditions.
- Installs or directs installation of safety devices on machinery.
- Maintains liaison with outside organizations, such as fire departments, mutual aid societies, and rescue teams.
- Prepares reports of findings from investigation of accidents, inspection of facilities, or testing of environment.
- Designs and builds safety devices for machinery or safety clothing.
- Checks floors of plant to ensure they are strong enough to support heavy machinery.
- Conducts plant or area surveys to determine safety levels for exposure to materials and conditions.
- Investigates causes of industrial accidents or injuries to develop solutions to minimize or prevent recurrence.
- Compiles, analyzes, and interprets statistical data related to exposure factors concerning occupational illnesses and accidents.
- Examines plans and specifications for new machinery or equipment to determine if all safety requirements have been included.

The section “Industrial Engineers, Including Health and Safety,” at pages 135 and 136 of the 2004-2005 edition of the *Handbook*, further reveals that the duties of this occupational category, which, according to the *Handbook*, deals primarily with the manufacturing and industrial production arena, are materially different from those of the proffered position.

To the extent the position and its duties are described in the record, they do not comport with any occupational category for which the *Handbook* reports a normal entry-level requirement of at least a bachelor’s degree in a specific specialty. In its consideration of each of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO discounted the assertions of counsel about the range of specialized knowledge and the educational requirements required for the position. They are not substantiated by evidence in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534

(BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is for a position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that the proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The record contains no attestations from other firms or from a professional association that the position is one for which there is a routine practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty.

Because there is no prior history of hiring for the proffered position, the petitioner cannot satisfy the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a baccalaureate degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). As already noted, the unsubstantiated opinions of counsel and the petitioner have no evidentiary weight.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.