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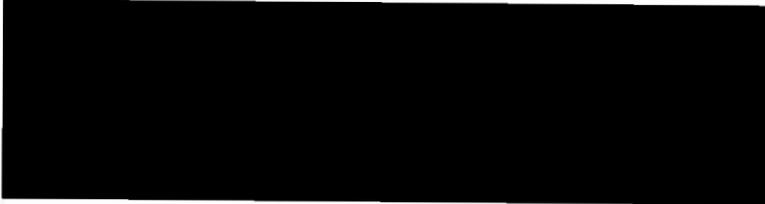


FILE: WAC 04 244 52328 Office: CALIFORNA SERVICE CENTER Date: **JUN 23 2006**

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, Chief
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 is a general contractor that seeks to employ the beneficiary as a cost estimator. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a timely appeal and additional 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) the 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) the Form I-290B, the brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a cost estimator. 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 that entail the following: analyze blueprints to prepare time, cost, materials, and labor estimates; assess cost effectiveness of products, projects or services, tracking actual costs relative to bids as the project develops; consult with clients, vendors, and personnel in other departments or construction foremen to discuss and formulate estimates and resolve issues; confer with engineers, architects, owners, contractors, and subcontractors on changes and adjustments to cost estimates; prepare estimates used by management for planning, organizing, and scheduling work; preparing estimates for selecting vendors or subcontractors; review material and labor requirements to decide cost-effectiveness to produce or purchase components; prepare cost and expenditure statements at regular intervals for the duration of the project; prepare and maintain a directory of suppliers, contractors, and subcontractors; and set-up cost monitoring and reporting systems and procedures. The petitioner asserts that it require a bachelor's degree or its equivalent in architecture or civil engineering for the proposed position.

The director stated that the proposed position resembles a cost estimator as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that a cost estimator does not require a bachelor's degree. The director found the Internet job postings and information concerning the *Occupational Information Network (O*Net)* and the Job Zone unpersuasive in establishing the offered position as a specialty occupation. The director noted that the petitioner failed to submit the requested lease agreement, and that the petitioner's job site is a residential house owned by the petitioner's president.

On appeal, counsel states that the *Handbook* reflects that the proposed position, a cost estimator, requires a bachelor's degree. Counsel states that *Young China Daily vs. Chappell*, 742 F. Supp. 552, 554 (N.D. Cal. 1989), and a prior AAO decision indicate that the petitioner's size, scope, and newness of operation are irrelevant in determining whether the offered position is a specialty occupation. Counsel discusses the *Occupational Information Network-Standard Occupational Classification (O*Net-SOC)* and the *Handbook's* information about a cost estimator. Counsel states that advances in the manufacturing and construction industries demand sophisticated skills from architectural cost estimators, and he maintains that an estimator is now regarded as a professional occupation. Counsel states that the petitioner provided the requested lease agreement. According to counsel, the petitioner moved to a new address and temporarily used the president's address during this transition.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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 2006-2007 edition of 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)).

In determining whether a 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.

Counsel asserts that the *O*Net-SOC's* Job Zone rating establishes the offered position as a specialty occupation. The Job Zone rating does not indicate that a baccalaureate or higher degree in a specific specialty is required as a minimum for entry into the occupation, however. A specific vocational preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO is not persuaded that the proposed position normally requires a bachelor's degree or its equivalent in architecture or engineering. The *Handbook* indicates the following about the educational requirements of cost estimators:

Job entry requirements for cost estimators vary by industry. In the construction industry, employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. However, most construction estimators also have considerable construction experience, gained through work in the industry, internships, or cooperative education programs. Applicants with a thorough knowledge of construction materials, costs, and procedures in areas ranging from heavy construction to electrical work, plumbing systems, or masonry work have a competitive edge.

Based on the *Handbook's* information, a cost estimator in the construction industry is normally not required to possess a bachelor's degree in a specific academic field such as architecture or engineering. Thus, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits a job

posting. This evidence is not influential in establishing the petitioner's degree requirement for the proposed position as no information in the job posting indicates that Bari Management Inc. is similar in nature (size and scope) to the petitioner, a small general contracting company. Thus, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position as so complex or unique that it can be performed only by an individual with a degree. The record contains a list showing completed, on-going, and projects for bidding. The petitioner titles the projects such as Claremont parking structure, Santa Monica Courthouse project, and roadside office building; however, there is no description of the scope or nature of the projects or explanation of the petitioner's role with each project. Given this lack of detail, the AAO cannot conclude that the proposed cost estimating duties would have the complexity or uniqueness to require a bachelor's degree in a specific specialty such as architecture or engineering. 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)). Thus, the petitioner fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the petitioner's project list lacks sufficient detail in order to establish that the nature of the proposed duties is so specialized and complex that the proposed duties require knowledge that is usually associated with the attainment of a baccalaureate degree in architecture or engineering. Accordingly, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.

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