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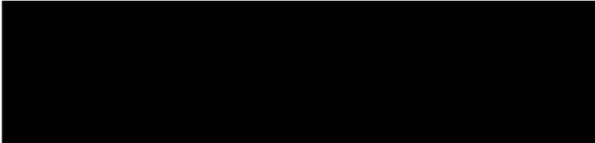
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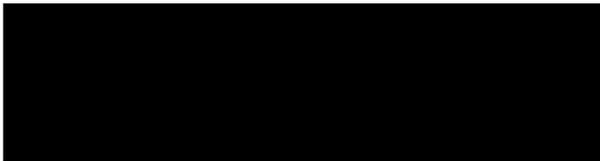


FILE: EAC 05 166 53107 Office: VERMONT SERVICE CENTER Date: JUN 23 2007

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.

*Michael T. Kelly*  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director 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 construction company that seeks to employ the beneficiary as a contract administrator. 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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.

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

An occupation which 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 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 qualification for classification as a specialty occupation, the proposed 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 proposed position.

The petitioner is a stone finish contractor and supplier. It was established in 2002, has 10 employees, and has a gross annual income of \$3,000,000. According to the petitioner’s response to the director’s request for additional evidence, the duties of the proposed position would include directing the activities of the company that are concerned with contracts for the purchase or sale of equipment, materials, and products; examining contracts for services performed; examining requirements for the performance of a particular activity; examining production schedules; ensuring the accuracy of performance; reviewing bids from other firms for conformity with contract requirements and determining whether those bids are proper or not; approving the requests for amendments or extensions of contracts; advising the planning and production works of their contractual rights and obligations; acting as a liaison between the petitioner and commission agents; and coordinating with different departments for the fulfillment of their contracts with respect to shipping and production.

In determining whether a proposed 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.

On appeal, newly-retained counsel provides additional details regarding the duties of the proposed position, and states the following:

The position can only be filled by a person with highly specialized knowledge and acumen as well as a sound baccalaureate level education in the field. It is beyond dispute that a high school graduate would not be qualified or equipped to perform the aforesaid duties . . . as stated in the response to the request for further evidence, the instant Petitioner’s past employees in this position have possessed baccalaureate degrees.

The proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As conveyed earlier in this decision, 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 proposed position. A review of the record’s discussion regarding the credentials necessary in order to perform the duties of this position reveals that a baccalaureate degree *in a specific specialty* is not required. The beneficiary possesses a bachelor’s degree in history, a master’s degree in history, and a master’s degree in international relations.<sup>1</sup> Counsel and the petitioner have submitted insufficient information to establish that a degree in international relations is directly related to the performance of the proposed duties;

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<sup>1</sup> The beneficiary’s degrees in history are from Indian institutions and have not been evaluated for their equivalency to degrees from American institutions.

counsel's statement on appeal that the candidate must possess knowledge of international and historic labor issues, global facts affecting the market values of contract obligations, and regulatory constraints is insufficient. Moreover, it is unclear from the beneficiary's transcript that she possesses such knowledge. Also, the AAO notes that the individual who, according to the petitioner, previously performed the duties proposed for the beneficiary, [REDACTED] possessed a bachelor's degree in "arts." It is unclear that this individual would have had the knowledge about international and historic labor issues, etc., that the petitioner now says are necessary. There is also no evaluation of this degree in the record, so it is not even clear whether this individual's degree is equivalent to a degree from an American institution of higher education.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific specialty. As the petitioner finds acceptable a degree in international relations, with no apparent specialization related to the field of contract administration, it does not appear that the petitioner requires a degree in a specific field of study. Rather, it appears as though the petitioner would find acceptable a candidate with a degree in any field.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no evidence has been submitted to establish this criterion. Thus, the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) has not been established.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree in a specific field can perform them. Again, the record in this case demonstrates that the petitioner would find acceptable a degree from a range of fields, which precludes approval of the petition under this prong. Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

As noted previously, the record contains a copy of the diploma of the employee who previously held this position. The petitioner contends that the proposed position qualifies as a specialty occupation under this criterion because this individual held a diploma. However, the AAO notes again that this degree was not in a specific field of study; it is a bachelor's degree in "arts." Moreover, it is not clear from the record that this degree is equivalent to a degree from an institution of higher education in the United States. The petitioner's submission of this individual's degree reinforces the AAO's determination that a degree in a specific specialty is not required for the proposed position. As noted previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. *See also Matter of Michael Hertz*. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific field of study. However, such a demonstration has not been made. Again, the record in this case demonstrates that the petitioner would find acceptable a degree from a range of fields, which precludes approval of the petition under this criterion. Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel's citation of an unpublished AAO decision is unpersuasive. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Again, the petitioner has failed to establish that it requires a baccalaureate degree, or its equivalent, in a specific field for the proposed position.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will not disturb the director's denial of the petition.

Finally, the AAO notes that it is unable to address the director's findings in regard to the beneficiary's maintenance of nonimmigrant status, as such determinations are within the director's sole discretion and beyond the scope of the AAO's jurisdiction.

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.