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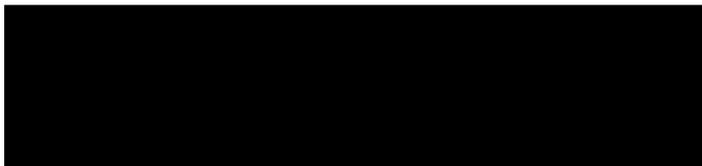
U.S. Department of Homeland Security
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U.S. Citizenship
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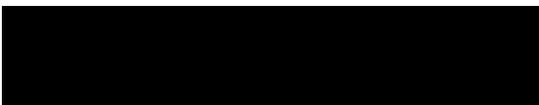
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FILE: SRC 06 024 50910 Office: TEXAS SERVICE CENTER Date: SEP 17 2007

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:

SELF-REPRESENTED

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 Director, Texas 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 in an employee leasing company that seeks to employ the beneficiary as a facilities engineer/planner. 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 on the ground that the petitioner failed to adequately respond to the director's request for evidence with regards to licensure requirements, and therefore, the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The

beneficiary has the required education under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the AAO accepts the Cultural House Evaluation Services evaluator's conclusion that the beneficiary has attained the equivalent of a bachelor's degree in mechanical engineering.

The director denied the petition on the ground that the petitioner failed to adequately respond to the director's request for evidence with regards to licensure requirements. On appeal, the petitioner states that "because the Facilities Engineer/Planner is doing service for his employer and does not offer his services directly to the public, the license requirement becomes discretionary, not mandatory." It is not possible to determine what the job duties actually entail in this case because the beneficiary will not perform his duties as a facilities engineer/planner at the petitioner's place of business but will rather perform them for clients of the petitioner. As discussed further below, the record does not contain a job description from the petitioner's clients and, therefore, it is impossible to determine from the record whether the beneficiary is exempt from Florida licensing requirements under FS 471.003(2). The petitioner has submitted no evidence to support its assertion that the position does not require licensure. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). Therefore, the petitioner has not overcome the decision of the director, and the petition may not be approved.

Beyond the decision of the director, the petitioner has not established that the position is 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:

[A]n 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 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 proposed position.

The petitioner's February 6, 2006 response to the director's request for evidence states that the beneficiary would work with clients; be responsible for successful completion of assigned engineering projects; apply intensive and diversified knowledge of engineering principles and practices to all projects assigned; make decisions independently on engineering problems and methods; and represent the company in conference to resolve important questions and to plan and coordinate work.

In the response to the RFE, the petitioner stated that the beneficiary would be required to:

- Plan, develop, coordinate, and direct the completion of assigned projects.
- Prepare engineering project proposals.
- Establish and maintain primary contact with clients.
- Prepare schedules to assure projects are on time and within budget projections.
- Determine technical and professional staffing needs; hire, train, manage and motivate personnel.
- Establish and maintain quality and accuracy standards.
- Review and approve complete plans.
- Obtain approval of improvement plans and permits from governing entities.

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. The AAO routinely consults the

Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The record indicates that the petitioner is an employment contractor who will place the beneficiary at multiple work locations. Although the petitioner will act as the beneficiary's employer, the evidence of record establishes that the petitioner is an employment contractor in that the petitioner will place the beneficiary at work locations to perform services established by contractual agreements for third-party companies.¹

Pursuant to the language at 8 C.F.R. § 214.2(h)(2)(i)(B), employers must submit an itinerary with the dates and locations of employment in such situations. While the Aytes memorandum cited at footnote 1 broadly interprets the term "itinerary," it provides CIS the discretion to require that the petitioner submit the dates and locations of the proposed employment. The record of proceeding, as currently constituted, does not establish that the petitioner has three years of work for the beneficiary to perform. It does not contain an itinerary of employment.²

The record also does not establish that the proposed position is a specialty occupation. The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proposed position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proposed position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

As the record does not contain any documentation that establishes the specific duties the beneficiary would perform under contract for any of the petitioner's clients, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(I). For this additional reason, the petition may not be approved.

¹ See also Memorandum from Michael L. Aytes, Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

² As noted by Assistant Commissioner Aytes in the cited 1995 memorandum, "[t]he purpose of this particular regulation is to [e]nsure that alien beneficiaries accorded H status have an actual job offer and are not coming to the United States for speculative employment."

Because the petitioner failed to provide a meaningful description of the duties from the entities where the beneficiary will work, the job duties described in the record have no context and cannot be determined to require a degree in a specific field.

In its response to the director's RFE, the petitioner quoted the following from the *Handbook's* discussion of the duties of engineering and natural sciences managers: "Engineering and natural sciences managers plan, coordinate, and direct research, design, and production activities. They may supervise engineers, scientists, and technicians, along with support personnel. These managers use their knowledge of engineering and natural sciences to oversee a variety of activities."

The *Handbook's* discussion of the duties of engineering and natural sciences managers goes on to describe these positions as follows:

Engineering managers may supervise people who design and develop machinery, products, systems, and processes, or they may direct and coordinate production, operations, quality assurance, testing, or maintenance in industrial plants. Many are plant engineers, who direct and coordinate the design, installation, operation, and maintenance of equipment and machinery in industrial plants. Others manage research and development teams that produce new products and processes or improve existing ones.

Natural sciences managers oversee the work of life and physical scientists (including agricultural scientists, chemists, biologists, geologists, medical scientists, and physicists). These managers direct research and development projects and coordinate activities such as testing, quality control, and production. They may work on basic research projects or on commercial activities. Science managers sometimes conduct their own research in addition to managing the work of others.

Although the list of duties provided by the petitioner for the proposed position are vague and generic, and do not include a description of duties from the location where the beneficiary will perform the services, the duties do not appear to be those of an engineering and natural sciences manager as described by the *Handbook*. The duties, without further context, describe an administrative manager working as a facilities manager. The *Handbook's* discussion of the duties of administrative managers describes facilities managers as follows:

Administrative services managers who work as facility managers plan, design, and manage buildings and grounds in addition to people. This task requires integrating the principles of business administration, architecture, and behavioral and engineering science. Although the specific tasks assigned to facility managers vary substantially depending on the organization, the duties fall into several categories, relating to operations and maintenance, real estate, project planning and management, communication, finance, quality assessment, facility function, technology integration, and management of human and environmental factors. Tasks within these broad

categories may include space and workplace planning, budgeting, purchase and sale of real estate, lease management, renovations, or architectural planning and design. Facility managers may suggest and oversee renovation projects for a variety of reasons, ranging from improving efficiency to ensuring that facilities meet government regulations and environmental, health, and security standards. Additionally, facility managers continually monitor the facility to ensure that it remains safe, secure, and well-maintained. Often, the facility manager is responsible for directing staff, including maintenance, grounds, and custodial workers.

The AAO now turns to the *Handbook's* discussion of the qualifications necessary for entry into the field. The *Handbook* states the following with regard to the educational qualifications required for facilities managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration, or facility management. Many have a background in real estate, construction, or interior design, in addition to managerial experience.

Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires a showing that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the type of position being proffered. The *Handbook* indicates that most facilities manager positions are filled on the basis of experience. Moreover, the fact that "most" facilities managers have an undergraduate or graduate degree does not rise to this criterion's standard of employers normally requiring at least a bachelor's degree or its equivalent in a specific specialty. As such, a generic facilities manager does not qualify as a specialty occupation under the first criterion.

The *Handbook* also notes that a bachelor's degree in a wide range of educational backgrounds is suitable for entry into facilities managerial positions; however, when a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, 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 specialized field of study. Again, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

For all of these reasons, 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)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

Nor does the proposed generic position 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.

In its February 6, 2006 letter in response to the director's request for additional evidence, the petitioner submitted a description for a Planner II position with the Department of Planning and Zoning, Grand County, Colorado. The description of the Planner II position included the following education and/or experience: "Bachelor[']s Degree from four-year college or university in land use planning, architecture, landscape architecture or engineering with three years of related experience; or master[']s degree with minimum of two years related experience or equivalent; experience in geographic information systems (GIS) preferred." One example is not evidence that it is the industry standard among similar organizations to require a baccalaureate degree for parallel positions. Furthermore, the petitioner is a private placement company and the Department of Planning and Zoning, Grand County, Colorado is not a similar organization to that of the petitioner's. To meet the burden of proof imposed by the regulatory language, the petitioner must establish that its degree requirement exists in parallel positions among organizations similar to the petitioner. The petitioner has not submitted documentation to support such an industry standard.

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

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to establish that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position, as set forth in the petition, does not support such a finding, as they are too vaguely described and are not specific to the work to be performed at the petitioner's clients. As the record does not contain information about the exact nature of the employment to be performed, it cannot be concluded that the proposed position is so complex or unique that only an individual with a degree in a specific field can perform them.

Therefore, the petitioner has not established that the proposed position qualifies 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. In the case of an employment contractor, the petitioner would have to establish that the entity where the beneficiary would be placed normally requires a degree in a specialty. *See Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The record contains no evidence that the petitioner's clients have hired a facilities manager in the past and therefore, eligibility under this criterion cannot be established.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record from the petitioner's clients to support a finding that the proposed position is specialized and complex, or that it requires the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the 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).

The AAO notes the petitioner's statement on appeal that this petition should be approved since it was based on evidence found adequate before. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

The petitioner has not established that the beneficiary is qualified for the position, that the proposed position qualifies for classification as a specialty occupation, or that it has an itinerary of employment. Accordingly, the AAO will not disturb the director's denial of the petition

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.

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Page 10

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