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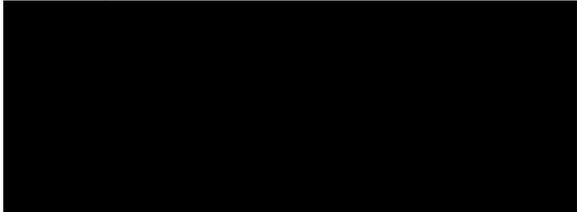
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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 263 53157 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an electrical contractor with 42 employees and gross annual income of \$4.2 million. It seeks to employ the beneficiary as a junior mathematician and to classify him 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, although a mathematician's position would qualify as a specialty occupation, the beneficiary does not qualify for such a position since he only has a bachelor's degree, whereas a mathematician in private industry is required to have an advanced degree. On appeal counsel submits a brief arguing that advanced degrees are not always required of mathematicians in the private sector and that, in the instant case, a bachelor's degree is sufficient for the proffered position.

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.

As provided in 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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation the 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.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; (5) the petitioner's appeal, Form I-290B, and (6) the petitioner's appeal brief with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a junior mathematician. Evidence of the beneficiary's duties includes the Form I-129 petition filed in August 2002, the petitioner's letter in support of the petition, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would be responsible for collecting, analyzing and interpreting data affecting business projects. Specific tasks of the position include (1) collecting and analyzing engineering, scientific, and financial data to develop a decision support system in order to analyze construction projects, maintain work force scheduling and decide cost-effectiveness of projects involving alternative engineering designs; (2) interpreting data concerning bid budgeting expenditure application techniques and the human resources scheduling process, facilitating interface among the company's various functions; (3) applying computer-based optimizing methods to develop and interpret information to assist management with operational and management functions in reports forecasting and outlining collaborative steps from the commencement to the finalization of projects; (4) assisting management in solving problems by mathematical methods, working closely with and evaluating operations of architects, planners, engineers, inspectors, appraisers, structural analysts and other professionals; and (5) conducting quantitative analysis of information affecting business activities and projects by researching, designing, recommending, implementing and maintaining integrated systems and statistical software packages. The petitioner asserted that a qualified candidate for the job must have at least a bachelor's degree in mathematics. The beneficiary, a native of Taiwan, graduated in December 2001 from Biola University in [REDACTED] California, with a Bachelor of Science degree in Mathematical Science.

In his decision the director implicitly accepted the petitioner's contention that the proffered position – junior mathematician – is a specialty occupation, but found that the beneficiary did not possess the

requisite educational degree for the position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director stated that "[i]n private industry, candidates for mathematician jobs typically need a Master's or Ph.D. degree." Since the beneficiary only has a bachelor's degree the director concluded that he did not qualify for classification as an alien employed in the specialty occupation of mathematics.

On appeal counsel points out that the *Handbook* simply states that candidates for mathematician jobs typically need a Master's or Ph.D. degree, not that an advanced degree is always required. Counsel submitted several internet job postings for mathematicians and related positions in private industry and government that required only a bachelor's degree. As explained by counsel in its appeal brief, sometimes an employer "would prefer to hire a person with less specialized training and a more generalized understanding of mathematics . . . [who] is often times easier to train than a person holding a more advanced academic degree than a bachelor's degree." Counsel refers to the petitioner's job opening announcement which specified that a bachelor's degree in mathematics or a related field, not an advanced degree, was required for its junior mathematician position. The beneficiary has a bachelor's degree in mathematics from Biola University in California. According to counsel, therefore, he is qualified, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(I), to perform the services of the specialty occupation.

Before addressing the question of whether the beneficiary is qualified to perform the services of the junior mathematician position, the AAO will revisit the issue of whether the subject position qualifies as a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties of the position are determinative, not the title. The position must require the use of highly specialized knowledge and at least a bachelor's degree in the specific specialty to fit the statutory definition of a specialty occupation. As previously indicated, the director accepted, without discussion, that the junior mathematician position is a specialty occupation. The AAO does not agree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered by CIS are whether the *Handbook* indicates a degree is required by the industry; 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. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

As described in the *Handbook*, 2004-05 edition, at page 110, "mathematicians use mathematical theory, computational techniques, algorithms, and the latest computer technology to solve economic, scientific, engineering, physics, and business problems." Applied mathematicians (as distinct from theoretical mathematicians) "use theories and techniques, such as mathematical modeling and computational methods, to formulate and solve practical problems in business, government, and engineering, and in the physical, life, and social sciences," the *Handbook* continues. "For example, they may analyze the most efficient way to schedule airline routes between cities, the effect and safety of new drugs, the aerodynamic characteristics of an experimental automobile, or the cost-effectiveness of alternative manufacturing processes." According to the *Handbook*, "major employers" of mathematicians in the

All of the above advertised positions require more mathematical knowledge and involve more mathematical tasks than the junior mathematician position proffered by the petitioner. The job description provided by the petitioner does not include detailed information about or examples of the mathematical theories or techniques its junior mathematician would employ in performing his tasks. The petitioner's job description is notably lacking, in comparison with the foregoing job announcements from other companies, in identifying the particular mathematical skills required by its junior mathematician and the particular mathematical activities he would be performing in the position. Based on the job description it appears that most of the tasks do not require a specialized knowledge of mathematics.

Accordingly, the AAO is not persuaded by the evidence of record that the position proffered by the petitioner requires the services of a mathematician. The position does not appear to require the theoretical and practical application of a body of highly specialized knowledge associated with a bachelor's or higher degree in mathematics, as required to fit the statutory definition of a specialty occupation. Rather, the subject position seems to resemble that of a construction cost estimator, as discussed in the *Handbook*, 2004-05 edition, at page 78:

Cost estimators develop the cost information that business owners or managers need to make a bid for a contract or to determine if a proposed new product will be profitable. They also determine which endeavors are making a profit . . . [E]stimators compile and analyze data on all of the factors that can influence costs – such as materials, labor, location, and special machinery requirements, including computer hardware and software. On a construction project . . . the estimator determines the quantity of materials and labor the firm will need to furnish [T]he estimator must make decisions concerning equipment needs, sequence of operations, crew size, and physical constraints at the site On completion of the quantity surveys, the estimator prepares a cost summary for the entire project Construction cost estimators also may be employed by the project's architect or owner to estimate costs or to track actual costs relative to bid specifications as the project develops.

This description of construction cost estimators is notably similar to the petitioner's general description of its junior mathematician position in the Form I-129 petition as "collect[ing], analyz[ing], and interpret[ing] data that affect business projects." The position's specific tasks, outlined earlier in this decision, involve the collection and analysis of engineering, scientific, and financial data used in bidding on electrical construction projects, data interpretation with respect to bidding expenditures and work force scheduling, computer-based information processing to assist management functions throughout project cycle, working with and evaluating professional employees directly involved in project-related operations, and conducting ongoing quantitative analysis of business- and project-related information. The AAO concludes that the proffered position is akin to that of a cost estimator.

Turning to the regulatory criteria for specialty occupations, the *Handbook*, at page 79, indicates that employers in the construction industry "increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture." The *Handbook* goes on to state that "[c]ost estimators should have an aptitude for mathematics." *Id.* However, the *Handbook* does not indicate that a baccalaureate or higher degree in a specific specialty is normally required for entry into a construction cost estimator position. The AAO concludes, therefore, that the position proffered by the petitioner does not require the services of an individual with a

baccalaureate or higher degree in the specialty, as required to meet the first alternative criterion of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Similarly, the petitioner has not established that the proffered position, viewed in the context of the petitioner's business, is so complex or unique, or that the specific duties described by the petitioner are so specialized or complex, as to require the knowledge and services of an individual with a baccalaureate or higher degree in the specialty of mathematics, as required to meet the alternative criteria of a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4). Nor has the petitioner demonstrated that a degree in mathematics is common to the industry in parallel positions among similar organizations, which is another alternative criterion to establish a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The job postings submitted from other companies, as previously discussed, do not involve parallel positions or similar organizations. None of the companies advertising for mathematicians, as far as the record shows, is comparable to the petitioner in the nature of its business activities or the scale of its business operations.

Lastly, the petitioner has provided no information that it normally requires a degree or its equivalent for the position, which is the final alternative criterion, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), to establish that the subject position is a specialty occupation. There is no evidence in the record that the subject position previously existed. Consequently, the petitioner has no hiring history.

Thus, the record does not establish that the position proffered to the beneficiary meets any of the four criteria of a specialty occupation in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner has not established that the beneficiary will be coming to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As previously discussed, the director determined that the beneficiary was not qualified to perform the services of a mathematician because he did not have the requisite degree for the specialty occupation. Since the AAO determines that the proffered position is not a specialty occupation, it need not further address the question of whether the beneficiary's baccalaureate degree in mathematics qualifies him to perform the services of a junior mathematician. The beneficiary's credentials to perform a particular job are relevant only if the position is found to be a specialty occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the petition.

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