

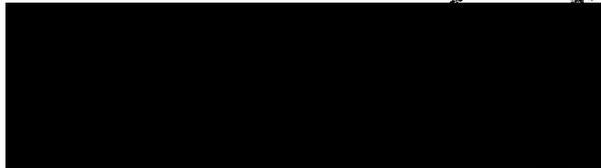
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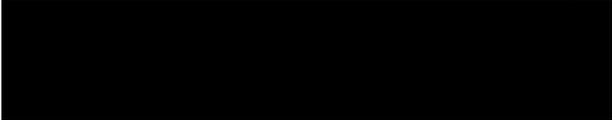
U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
and Immigration
Services



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FILE: WAC 03 010 51563 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 2004**

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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center 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, and seeks to employ the beneficiary as a construction engineer. The petitioner 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 brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

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 field 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 are 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 proceedings before the AAO contains: (1) 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 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 construction engineer. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: review plans, specifications, and general conditions of job bids and prepare completed bids for proposed projects (50 percent of the time); manage and control construction projects, which involves pre-construction meetings with architects, structural/civil engineers, owners/representatives of projects to review plans and specifications and make necessary changes, and prepare detailed construction schedules for the entire project and each trade working on the project (25 percent of the time); select subcontractors for projects, crews for in-house trades, the on-site superintendent, and insure that the project is completed within budget while seeing that quality control is maintained (17.5 percent of the time); and complete project closeout, which includes preparing and submitting "as built" drawings reflecting all work performed as well as changes made, and a project summary showing the estimated cost, actual cost, estimated time frame and actual time frame (7.5 percent of the time). The petitioner requires a minimum of a bachelor's degree in civil or construction engineering for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief and additional information stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for construction

managers, not cost estimators as determined by the director. The *Handbook* notes that traditionally, persons advance to construction management positions after having substantial experience as construction craft workers - carpenters, masons, plumbers, or electricians for example, or after having worked as construction supervisors. Today, employers increasingly prefer individuals who combine industry work experience with a bachelor's degree in construction science, construction management, or civil engineering. The *Handbook* is clear, however, that even though degrees are increasingly preferred in the industry, a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has not, therefore, satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits an opinion letter from [REDACTED], an Assistant Professor in the Department of Civil, Construction and Environmental Engineering at Oregon State University. [REDACTED] opines that the duties of the proffered position require performance by an individual with at least a bachelor's degree in civil engineering, architectural engineering, construction management or a related field. [REDACTED] further states that while in the past these positions may have been filled by employees who worked their way up through the trades, it is now the norm for employees to have a minimum of a degree in one of the aforementioned disciplines. The opinion of [REDACTED] is based on his education and experience. [REDACTED] did not provide, however, evidence of any studies, industry surveys, or other information demonstrating the basis of his opinion. It is therefore given little weight and is in conflict with the findings previously noted in the *Handbook*. In addition to the opinion of [REDACTED] the petitioner submitted copies of job advertisements to establish that that a degree requirement is common to the industry in parallel positions among similar organizations for the proffered position. Of the four advertisements submitted that relate to this position, all require a bachelor's degree in civil engineering, construction management, or a related field. Four job advertisements, however, are insufficient in scope to establish an industry standard. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, the duties of the offered position are standard in the industry for construction managers/engineers. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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.

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 and the appeal shall accordingly be dismissed.

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