



U.S. Citizenship
and Immigration
Services

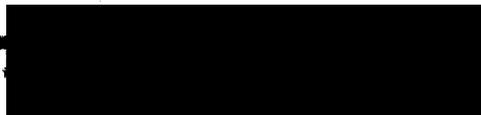
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FILE: SRC 02 160 50860 Office: TEXAS SERVICE CENTER Date:

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:

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

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 hardwood lumber mill that seeks to employ the beneficiary as a lumber inspector. 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 states that the proffered position qualifies as a specialty occupation and submits 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) 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) Form I-290B 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 lumber inspector. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising and classifying grades, types, and species of cut lumber; organizing work methods; serving as quality assurance analyst and mill engineer; supervising and directing workers in activities such as transporting, storing, unloading, scaling, and sorting of logs; overseeing activities of lumber inspectors; planning the production schedule; and analyzing personnel and using mathematical formulas to determine which machines and personnel will be used to meet production quotas. The petitioner stated that a candidate must possess:

A "BS/AS (minimum) in forestry or a BS/BA in a related business field and/or equivalent experience. If AS degree, a minimum of 2 years supervisory experience is required. NHLA certification for grading lumber. A minimum of 5 years experience in lumber grading.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found the submitted evidence unpersuasive.

On appeal, the petitioner states that the proffered position qualifies as a specialty occupation. The petitioner states that grading hardwood lumber requires more education and is more difficult than grading softwood lumber. Relying on submitted evidence, the petitioner states that there is a shortage of qualified hardwood lumber inspectors. The petitioner cites a quotation which states "[I]t takes month[s] of study and years of experience to become proficient in the application of the grading rules." The petitioner claims that most lumber mills need, as an absolute minimum, an inspector that has National Hardwood Lumber Association (NHLA) certification and at least two years of experience. Furthermore, the petitioner claims that a mill specializing in hardwood lumber and selling internationally would naturally seek to hire an inspector/supervisor possessing a bachelor's degree. According to the petitioner, this is in accord with similar companies and organizations. The petitioner points to submitted evidence of job offers to substantiate this claim. The petitioner submits documentary evidence about Perdue University; the California State University, Fullerton; a worker's compensation case; and NHLA rules for measuring and inspecting. The AAO notes that the record does not contain a document entitled "Jobs for Biologists, or What Do I Do with My BS in Biology," though the petitioner claims to have submitted this document.

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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As previously mentioned, 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. In the appeal brief and the September 26, 2002 letter the petitioner does not state that candidates are required to hold a bachelor's degree in a specific specialty. For example, on appeal the petitioner attests:

The inspection of hardwood lumber is unique as the NHLA grading rules are applied only in the hardwood lumber industry. The minimum requirement for employment as a hardwood lumber inspector in the hardwood lumber industry is certification. However, an individual with a baccalaureate or higher degree would not be considered overqualified for the position of hardwood lumber inspector.

In the September 26, 2002 letter, on page three, the petitioner set forth the job description of its lumber inspector/supervisor. The job description read that a qualified candidate must possess:

A BS/AS (minimum) in forestry or a BS/BA in a related business field and/or equivalent experience. If AS degree, a minimum of 2 years supervisory experience is required. NHLA certification for grading lumber. A minimum of 5 years experience in lumber grading.

Neither of the quoted passages stated that a candidate is required to possess a bachelor's degree in a specific specialty for entry into the proffered position. On appeal, the petitioner clearly states that certification is the minimum requirement for entry in the occupation. In the lumber inspector/supervisor job description the petitioner stated that it will accept a candidate holding an associate degree, NHLA certification, and possessing two years of supervisory experience and five years of experience in lumber grading. The record shows, unquestionably, that candidates for the position of lumber inspector are not required to possess a bachelor's degree in a specific specialty. Based on the record, the petitioner fails to establish the first criterion.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty. Accordingly, the petitioner will not be able to establish that it has a degree requirement that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

The third criterion requires that the employer establish that it normally requires a degree or its equivalent for the position. The Act states that, to qualify as a specialty occupation, an occupation must require the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. As discussed, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth and final criterion requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that candidates possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.

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