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U.S. Citizenship  
and Immigration  
Services



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FILE: SRC 03 187 52951 Office: TEXAS SERVICE CENTER Date: AUG 05 2004

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.

*Mani Johnson*

*RPW* 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 an architectural services company that seeks to employ the beneficiary as an architectural drafter. 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and submits additional documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated July 9, 2003; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 an architectural drafter. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the petitioner, the beneficiary's duties would involve primary responsibility for the preparation of blueprints and other architectural plans necessary for the construction of single-family and other residences. In the petitioner's response to the director's request for further evidence, the petitioner described the position as responsible for the preparation of design and technical drawings and reports using computer-aided design and drafting (CADD) systems. Typical tasks were described as preparing schematic design, design development and construction documents for all disciplines using CADD system equipment and techniques; maintaining technical standards as part of computer software; troubleshooting minor hardware and software problems; and training non-computer literate technical staff members. The petitioner required the candidate to have either a bachelor's degree or a master's degree in architecture with CADD training, or their equivalent. The petitioner also described the certification necessary for the job as "frequently licensed in architecture or certified in technical services/ drafting and CADD operations."

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

On appeal, counsel states that the position of architectural draftsman is a specialty occupation based on the job duties. Counsel added more details to the job duties outlined previously. For example, with regard to the production of schematic designs, counsel stated that these plans needed to be done to scale, to include all structural engineering specifications, and to be based on building codes for southwest Florida. In addition, counsel stated that the beneficiary would be supervising staff that she will train on the CADD computer programs, among others. Counsel submits a summary report for architectural drafters, excerpted from the Department of Labor's Occupational Information Network *O\*Net*. Counsel states that the *O\*Net* describes the proffered position as being in Job Zone Four, that normally requires a bachelor's degree and experience.

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 turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to architectural drafters, the 2004-2005 edition of the *Handbook* states the following: "Architectural drafters draw architectural and structural features of buildings and other

structures. These workers may specialize in a type of structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber." With regard to the proffered position, it is an architectural draftsman. With regard to training for such a position, the *Handbook* states:

Employers prefer applicants who have completed postsecondary school training in drafting, which is offered by technical institutes, community colleges, and some 4-year colleges and universities. Employers are most interested in applicants with well-developed drafting and mechanical-drawing skills; knowledge of drafting standards, mathematics, science, and engineering technology; and a solid background in computer-aided design and drafting techniques. In addition, communication and problem-solving skills are important.

Thus, the *Handbook* does not establish that a baccalaureate degree is a minimum requirement for entry into the proffered position. Without more persuasive evidence, the petitioner did not establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to counsel's reference to job zone categories outlined in the *O\*Net*, the AAO does not view the *DOT* and the *O\*Net* as persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. For example, the job zone description submitted by counsel states that most of the occupations in zone require a four-year bachelor's degree, but some do not. It also identifies the proffered position as an apprenticeable specialty, with no indication of the level of apprentice training.

With regard to parallel positions in similar architectural services firms, the petitioner did not submit any further documentation. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner did not provide any documentation as to the academic credentials for other architectural drafters previously or currently working with the petitioner. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the duties of the position appear to involve knowledge of computer tools and programs to produce architectural drawings. The petitioner provided no further information on the complexity of the plans for architectural projects on which the beneficiary would be working. The record is also devoid as to the number of staff members the beneficiary would be supervising or training and their academic credentials. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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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.