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



U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: 1/14

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:

[Redacted]

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.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**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 installs, fabricates, and distributes tile and marble. It seeks to employ the beneficiary as an estimator. 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.

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 an estimator. 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 reviewing plans to project materials and labor costs and timetables; inspecting completed projects; recommending procedures to cut costs; reviewing designs to ensure compliance with engineering principles and customer contract requirements; and coordinating all activities concerned with technical developments, scheduling, and resolving engineering and design-related problems. The petitioner stated that a candidate must possess a bachelor's degree in architecture, engineering, mathematics, construction, or in a related field.

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). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that, as described by the petitioner, the duties of the proffered position resemble those performed by cost estimators. Nonetheless, the director stated that a company that installs, fabricates, and distributes tiles and marbles typically does not require the services of an estimator. For this reason, the director was not persuaded that the proffered position was that of an estimator. The director found that the companies in the submitted Internet postings were dissimilar from the petitioner.

On appeal, counsel claims that the duties of the proffered position are performed by estimators, a specialty occupation, and that the beneficiary is qualified for an estimator position. Counsel relies on several cases and submitted evidence, pages from the *Federal Register*, a letter from [REDACTED] and the *Handbook*, to support his claim.

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 *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)).

In determining whether a 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 wishes to note that the duties of the cost estimator in the petitioner's four Internet postings are somewhat inconsistent with the duties described in the petitioner's company letters. For example, the Internet postings stated that the cost estimator would "[s]upervise and control installation of projects relevant to standard government electrical control codes." Nowhere is this duty mentioned in the company letters. Thus, the AAO cannot determine how this duty relates, if at all, to the proffered position.

Counsel contends that the DOL's *Occupational Information Network* as shown in the *Federal Register* establishes that the proffered position requires a bachelor's degree. However, the *O\*Net* is not a persuasive source 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. The *O\*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular job and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL assigned it a specific education and training code in the *O\*Net*.

A careful review of the *Handbook* discloses that the duties of the proffered position are performed by an estimator/supervisor of tile installers, tilesetters, and marble setters who apply hard tile and marble to floors, walls, ceilings, and roof decks. According to the *Handbook*, on page 488, many tile installers, tilesetters, and marble setters learn their job through on-the-job training. Apprenticeship programs and some contractor-sponsored programs provide comprehensive training in all phases of the tilesetting trades. Most important, the *Handbook* reports that tile installers may advance to positions as supervisors or become salespersons or estimators. The petitioner therefore fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position because the *Handbook* explicitly states that an estimator/supervisor of tile installers would not require a bachelor's degree.

On appeal, counsel refers to the opinion letter by [REDACTED] Associate Professor in the Construction Department at Southern Polytechnic State University in Marietta, Georgia. In the letter, Associate Professor Itr attested that based on his extensive education and 19 years of experience in cost estimating and construction management-related positions, cost estimators are, with very few exceptions, bachelor's degree holders in architecture, construction, interior design, cybernetics, electrical engineering, or other engineering-related fields. [REDACTED] furthermore attested that only a person possessing a bachelor's degree in disciplines such as engineering, architecture, or construction would be able to perform the proffered position because the job duties include space allocation, determining technical specifications within strict budgetary guidelines, and reviewing plans in order to project costs such as material and labor and timetable structuring. Finally, [REDACTED] averred that employers seeking cost estimators to carry-out the installation and fabrication of tiles and marbles will, with very few exceptions, require that a candidate hold a specific degree because a cost estimator applies engineering, architectural, and construction techniques.

Although relevant, [REDACTED] attestations are not persuasive. [REDACTED] provided no independent evidence that would corroborate his statements that the proffered position requires a degreed individual. 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the *Handbook* clearly contradicts Dr. Itr's statements. It states that cost estimators/supervisors of tile installers would not require a bachelor's degree.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record contains Internet postings and an opinion letter from Topnotch International Services, Inc. The AAO has already discussed Dr. Itz's opinion letter.

The postings and letter from Topnotch International Services, Inc. are insufficient to establish the second criterion. The petitioner is dissimilar in size, scope, and in some cases nature, from the following companies: The Commonwealth of Pennsylvania and New York Housing Authority are a public entities; Structure cast is a precast concrete company; Unit Construction is a structural concrete construction company; Kvaeerner Inc. specializes in process technology design, project management, and construction; Graniterock is a materials supplier and general engineering contractor specializing in earth moving, underground, and paving construction; May Department Stores Company operates department stores; the undisclosed company with job order IXABKGVXS provides site excavation; and finally, a general contractor seeking a construction estimator accepts only architectural engineering or construction management degrees, a different degree requirement from the petitioner.

The AAO cannot determine the size, scope, or nature of the companies in the following postings: Management Recruiters, International represents an undisclosed client seeking candidates for public works projects; AppleOne represents an undisclosed construction company; a recruiter representing an undisclosed company seeks a senior estimator in Orange County, California; and no information is provided in the posting about Kitchell CEM.

In the Topnotch International Services, Inc. letter, the president of the company made a sweeping generalization about estimator positions: "an [e]stimator must, by definition, possess a bachelor's degree in an engineering or architectural/construction-related field." The president's statement does not specifically address the proffered position, and this is evident in the material difference between the president's description of an estimator and the petitioner's description of the proffered position. For example, the president claimed that estimators engage in "personnel analysis," "training," "testing," and "modification." Yet, the petitioner never indicated that the beneficiary would perform these duties. Finally, the president fails to submit independent evidence that would corroborate her assertions. 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 Treasure Craft of California, id.*

Based on the evidence in the record, the petitioner fails to establish the second criterion: that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would establish the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As previously discussed, the *Handbook* shows that the duties of the proffered position are performed by an estimator/supervisor of tile installers, tilesetters, and marble setters, and that these positions do not require a bachelor's degree. Furthermore, none of the submitted evidence such as opinion letters, Internet postings, tax records, the organizational chart, invoices for work, pages from the *Federal Register*, and the *Handbook* establish 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.

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.