



U.S. Citizenship
and Immigration
Services

identity, state, date of birth, and other information of potential relevance.

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[Redacted]

FILE: LIN 03 009 51124 Office: NEBRASKA SERVICE CENTER Date: JUN 16 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:

[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.

Mari Johnson

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 hospitality management company that seeks to employ the beneficiary as a facilities planner. 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.

Section 214(i)(1) of the Immigration and Nationality Act (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 facilities planner. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 23, 2002 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 perform duties that entail: evaluating the layout and furnishings of guest rooms, main lobby, corridors, conference rooms, and gymnasiums; developing plans to modernize the conference room; and reviewing contracts for furniture and decorations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in architecture, civil engineering, or a related field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director compared the offered position to that of a facility manager, within the category of administrative services manager, noting that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director determined 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 points out that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, which according to counsel, requires a degree to enter into the position. Counsel also notes that pursuant to an H-1B visa, the petitioner hired another facilities planner who possesses a bachelor of science in engineering. Counsel asserts that the evidence meets all four criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO notes that the *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating only indicates the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

On appeal, counsel submits documentation to demonstrate that the petitioner employs another degreed individual in the proffered position. Although this information indicates the petitioner's preference, it pertains to a single individual; hence, it does not constitute clear evidence of the petitioner's past hiring practices.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO agrees with the director that certain aspects of the proffered position pertain to the position of facility manager, as described in the *Handbook*. There also appears to be a significant emphasis on the design and décor of interior spaces, which is more akin to the position of interior designer than facility manager. According to the *Handbook*, a bachelor's degree in a related field is the normal minimum requirement for entry into interior designer positions. The *Handbook* notes that a background in architecture, such as the beneficiary's, may qualify an individual for certain design positions. The petitioner has not provided, however, sufficient information upon which to determine whether the nature of the position is more administrative or design-oriented.

The petitioner has not established that a baccalaureate or higher degree or its equivalent is the normal minimum entry requirement, as set forth at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I). The record contains no other evidence that establishes any of the other three regulatory criteria in this section. Hence, the petitioner has not shown that the position qualifies as a specialty occupation, and the AAO will 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.