U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

MAY 19 2004

FILE: WAC 03 023 54449 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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

for 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 is a construction and development company that seeks to employ the beneficiary as a project director. 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 submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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 project director. Evidence of the beneficiary's duties includes: the Form I-129; the October 15, 2002 letter 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, in part: planning, directing, coordinating, and overseeing the marketing of the construction company; previewing marketing and staffing requirements; establishing a work plan; hiring and assigning staff to projects; directing and coordinating project personnel to ensure timely and profitable completion of projects; previewing status reports and modifying schedules accordingly; preparing reports for management; and coordinating project activities to comply with governmental regulations and agencies. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the petitioner stated that a candidate must possess a bachelor's degree in business administration or marketing.

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). In particular, the director mentioned that the position seems to involve general managerial duties; its duties would not require professional skills.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel furthermore states that the director's finding is conclusory, devoid of analysis, and completely ignores the submitted evidence. Counsel stresses that the beneficiary - who is being hired because of his international experience - will market the company internationally, and counsel claims that the petitioner has a specialized marketing approach. Citing the *Handbook,* counsel states that general administrative services managers do not market a company. According to counsel, developing the work plan based on the analysis of changes in load development, construction costs, and unplanned substations indicate that the position's duties far exceed the scope of general managerial duties. Counsel emphasizes that the duties require specialized analysis and understanding of the construction industry, mathematical planning of the budget, and compliance with environmental, regulatory, and legal requirements. According to counsel, the petitioner's president and vice-president have performed the position's duties; both possess a bachelor's degree. Counsel states that the petitioner's evidence demonstrates that similar positions in parallel companies require at least a bachelor's degree. Counsel maintains that, as described in the *Handbook,* the proffered position is analogous to a construction manager - a position that requires a bachelor's degree.

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.

As previously stated, 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. A petitioner must establish that the proffered position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies are best typified by a degree granted by the institution at the baccalaureate level. Nonetheless, it must be demonstrated that the position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *Matter of Michael Hertz Assoc.* 19 I&N Dec. 558, 560 (Comm. 1988). Accordingly, the petitioner's requirement of a bachelor's degree in business administration would not qualify the proffered position as a specialty occupation; business

administration alone without a particular emphasis is not considered a specialized field of study. The AAO notes, moreover, that the petitioner also indicates that it accepts candidates holding a bachelor's degree in marketing.

The AAO next 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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) on the grounds that: (1) the beneficiary will market the company internationally; (2) the petitioner has a specialized marketing approach; (3) the position's duties such as developing the work plan entail more than general managerial duties; and (4) the duties require specialized analysis and an understanding of the construction industry, planning budgets, and complying with environmental, regulatory, and legal requirements.

Counsel's claims are without merit. 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 routinely consults the 2004-2005 edition of the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position are an amalgam of those performed by a construction manager and a marketing manager. The *Handbook*, furthermore, reports that a bachelor's degree in a specific specialty would not be required to perform these positions. According to the *Handbook*, traditionally persons have advanced to construction management positions after having substantial experience in the trades or after having worked as a construction supervisor or as an owner of an independent specialty-contracting firm. However, large construction firms tend to prefer - not to require - persons who combine industry experience with a bachelor's degree in construction science, construction management, or civil engineer.

Marketing manager positions, the *Handbook* reports, do not require a bachelor's degree in a specific specialty. The *Handbook* states that a wide range of educational backgrounds are suitable for entry into marketing managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. For example, employers accept a bachelor's degree in sociology, psychology, literature, journalism, or philosophy. With marketing, sales, and promotion management positions, only some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. The general trend is for many employers to accept candidates with experience in related occupations plus a broad liberal arts background. Whereas a smaller group of employers prefer candidates with a bachelor's or master's degree in business administration with an emphasis in marketing. The general trend demonstrates that a bachelor's degree in a specific specialty is not normally the minimum requirement for entry into a marketing manager

position. Thus, based on the information in the *Handbook*, the petitioner has not established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the submitted postings.

The postings are deficient in many respects, however. None of the postings have the same business administration or marketing degree requirement as the petitioner. Nearly all of the postings have duties that are dissimilar from the proffered position. Either the postings represent companies that are clearly dissimilar in nature, size and scope from the petitioner or this information is notably absent in the posting. An analysis of the postings reveals that AMPAN (American Plumbing and Mechanical, Inc.), a large plumbing and HVAC contractor with 6,000 employees, is dissimilar from the petitioner, and its position differs dramatically from the proffered position. Bernards Bros, Inc.'s degree requirement differs from the petitioner: it requires a bachelor's degree in construction management or a related architectural or engineering discipline or twenty years of experience instead of a bachelor's degree. Absent from the posting is the position's duties. Windsor Industries does not require a bachelor's degree, and its posted duty to manage and coordinate the production and installation of metal components differs materially from the duties of the proffered position. Another position, the development project manager for a real estate development firm, has duties that are somewhat similar to the proffered position. Nonetheless, the real estate development firm's degree requirement differs: it seeks candidates with bachelor's degrees in architecture, construction management, or a related field. In addition, the AAO cannot determine whether the petitioner is similar to the real estate development firm. COMFORCE, a recruitment agency, has two postings with degree requirements that differ from the proffered position: one posting requires a bachelor's degree in engineering, construction management, or a related field; the other requires a bachelor's degree – without specifying a particular field. As COMFORCE is a recruitment agency, the AAO cannot determine whether the petitioner is similar to the hiring companies. Yet another example is Jacobs Facilities, Inc. This company seeks candidates with bachelor's degrees in construction management, engineering, or architecture. Washington Mutual Bank and Denny's are obviously dissimilar in nature from the petitioning entity; both companies prefer - but do not require - a bachelor's degree. Public Storage is plainly dissimilar in nature from the petitioner, and it requires a college degree in construction management or a related field. The posting from Crown Advisors, Inc., a recruitment agency, for a project manager reveals that the company - a national multi-family/developer/builder with revenues exceeding $300 million - actually seeking the candidate differs from the petitioner in size, scope, and nature; moreover, it does not require a bachelor's degree. Finally, another posting from Crown Advisors, Inc. for a project manager for a private owner, developer and manager of shopping centers and retail real estate does not indicate that a bachelor's degree is required. In conclusion, the postings fail to establish that the petitioner's degree requirement in business administration or marketing is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

According to counsel, the petitioner establishes the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because its president and vice-president have performed the position's duties and both possess a bachelor's degree. There is, however, no evidence in the record to corroborate that the president and vice-president possess a bachelor's degree in business administration or marketing. 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 petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.[1] To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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* reveals that the duties of the proffered position are an amalgam of those performed by a construction manager and a marketing manager, and that a bachelor's degree in a specific specialty is not required to perform these positions.

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.

---

[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.