



U.S. Citizenship  
and Immigration  
Services

22



FILE: EAC 03 113 53461 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 corporation engaged in the business of building and developing residential, commercial, and institutional properties. In order to employ the beneficiary as a cost accountant, 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director's decision violated the standards of the Citizenship and Immigration Services in that the evidence of record establishes that the proffered position is a specialty occupation.

Upon consideration of the entire record, the AAO has concluded that the director was correct in denying the petition on the ground upon which he relied. In reaching this decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the petitioner's brief, and the evidence submitted with the brief.

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.

On appeal, the petitioner focuses on this job description information which was included in a prevailing wage request form that the petitioner had submitted with the Form I-129:

Determines costs of projects for construction company, such as raw material purchases, inventory, equipment and labor. Analyzes data, records results, using computer. Analyzes changes in construction design and methods, services and raw materials, to determine effects on costs. Provides management with reports specifying and comparing factors affecting costs and profitability.

The AAO recognizes the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. In its consideration of the evidence in this proceeding, the AAO consulted the 2004-2005 edition of the *Handbook*. Review of the *Handbook*’s section on accountants (pages 68-72) clearly establishes that the petitioner is mistaken in characterizing the proffered position as a cost-accounting job. The *Handbook* indicates that all authentic accountant positions require the application of the highly specialized knowledge of accounting principles that is achieved by at least a baccalaureate level in that discipline. The evidence of record in this proceeding does not establish that the proffered position would require such accounting expertise. The substantial disparity between the proposed duties and those of a cost accountant is indicated by comparing the record’s description of the proffered position and its duties with the general descriptions of accountant duties in the *Handbook*, including this excerpt which applies specifically to cost accountants:

*Management accountants*—also called cost, managerial, industrial, corporate, or private accountants—record and analyze the financial information of the companies for which they work. Other responsibilities include budgeting, performance evaluation, cost management, and asset management. Usually, management accountants are part of executive teams involved in strategic planning or new-product development. They analyze and interpret the financial information that corporate executives need to make sound business decisions. They also prepare financial reports for nonmanagement groups, including stockholders, creditors, regulatory agencies, and tax authorities. Within accounting departments, they may work in various areas, including financial analysis, planning and budgeting, and cost accounting.

As described in the record, the proffered position substantially comports with that of the construction cost estimator occupation as described within the cost estimators section of the 2004-2005 *Handbook* (at pages 78-80). This fact should be obvious in this excerpt:

Accurately forecasting the cost of future projects is vital to the survival of any business. Cost estimators develop the cost information that business owners or managers need to make a bid for a contract or to determine if a proposed new product will be profitable. They also determine which endeavors are making a profit.

Regardless of the industry in which they work, estimators compile and analyze data on all of the factors that can influence costs—such as materials, labor, location, and special machinery requirements, including computer hardware and software. Job duties vary widely depending on the type and size of the project.

The methods of and motivations for estimating costs can differ greatly by industry. On a construction project, for example, the estimating process begins with the decision to submit a bid. After reviewing various preliminary drawings and specifications, the estimator visits the site of the proposed project. The estimator needs to gather information on access to the site and availability of electricity, water, and other services, as well as on surface topography and drainage. The information developed during the site visit usually is recorded in a signed report that is included in the final project estimate.

After the site visit is completed, the estimator determines the quantity of materials and labor the firm will need to furnish. This process, called the quantity survey or “takeoff,” involves completing standard estimating forms, filling in dimensions, number of units, and other information. A cost estimator working for a general contractor, for example, will estimate the costs of all items the contractor must provide. Although subcontractors will estimate their costs as part of their own bidding process, the general contractor’s cost estimator often analyzes bids made by subcontractors as well. Also during the takeoff process, the estimator must make decisions concerning equipment needs, sequence of operations, crew size, and physical constraints at the site. Allowances for the waste of materials, inclement weather, shipping delays, and other factors that may increase costs also must be incorporated in the estimate.

On completion of the quantity surveys, the estimator prepares a cost summary for the entire project, including the costs of labor, equipment, materials, subcontracts, overhead, taxes, insurance, markup, and any other costs that may affect the project. The chief estimator then prepares the bid proposal for submission to the owner.

Construction cost estimators also may be employed by the project’s architect or owner to estimate costs or to track actual costs relative to bid specifications as the project develops. In large construction companies employing more than one estimator, it is common practice for estimators to specialize. For example, one may estimate only electrical work and another may concentrate on excavation, concrete, and forms.

...

Computers play an integral role in cost estimation because estimating often involves complex mathematical calculations and requires advanced mathematical techniques. For example, to undertake a parametric analysis (a process used to estimate project costs on a per unit basis, subject to the specific requirements of a project), cost estimators use a computer database containing information on costs and conditions of many other similar projects. Although computers cannot be used for the entire estimating process, they can relieve estimators of much of the drudgery associated with routine, repetitive, and time-consuming calculations. Computers also are used to produce all of the necessary documentation with the help of word-processing and spreadsheet software, leaving estimators more time to study and analyze projects.

In light of this evidentiary background, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which recognizes as specialty occupations those positions whose normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties. This is because the *Handbook's* information on cost estimators indicates that, while firms employing persons in this occupation have an increasing preference bachelor's degrees in certain specialties, they have not established this educational credential as a normal minimum requirement for entry-level hiring. This fact is evident in this excerpt:

Job entry requirements for cost estimators vary by industry. In the construction industry, employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. However, most construction estimators also have considerable construction experience, gained through work in the industry, internships, or cooperative education programs. Applicants with a thorough knowledge of construction materials, costs, and procedures in areas ranging from heavy construction to electrical work, plumbing systems, or masonry work have a competitive edge.

Next, the evidence of record has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). That is, the evidence of record does not establish a degree requirement that is common to the industry in parallel positions among similar organizations.

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The record contains no evidence to effectively counter the *Handbook's* indication that construction cost estimating duties can be performed without such a degree.

Next, the past-hiring-practice criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor. As this is the first time that the petitioner is hiring for the proffered position, it cannot present a hiring history to establish that it normally requires at least a bachelor's degree in a specific specialty.

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 them is usually associated with the attainment

of a baccalaureate or higher degree in a specific specialty. The evidence of record does not establish this to be the case with the proffered position.

As the evidence of record does not satisfy any specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.

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