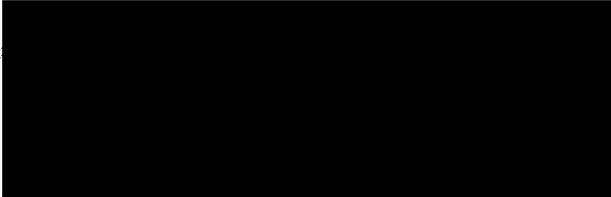


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U.S. Citizenship
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FILE: WAC 03 209 53467 Office: CALIFORNIA SERVICE CENTER Date: AUG 08 2005

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.

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 structural consulting company that seeks to employ the beneficiary as an architectural designer/production 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 the proffered position is not a specialty occupation. Counsel submits a brief and additional evidence.

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 documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an architectural designer/production drafter. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail designing and producing comprehensive drawings, structural plans and construction documents; developing computer aided drafting (CAD) for structural and architectural projects; developing drawings based on design sketches. The petitioner indicated that a B.S. degree in architecture was required.

The director requested additional evidence about the position, the company and the beneficiary's qualifications. Counsel for the petitioner responded and indicated that the proffered position's duties include the following: develop architectural drawing and layouts, such as floor plans, elevations, sections and details based on sketches provided by the manager who is an engineer (18 hrs per week); develop structural drawings and plans based on sketches and corrections provided by the structural manager, such as foundation plans, framing plans & detailing (18 hrs per week); plot project drawings and prepare project files for clients, review engineering and architectural documentation after corrections, and update detail and specification libraries (4 hrs per week). The petitioner stated that the position requires a BA/BS in Architecture or Structural Engineering.

The director determined that the proffered position was not a specialty occupation. The duties of the proffered position are performed by an architectural drafter, and the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) explains that this occupation does not require a bachelor's degree in a specific specialty. The director found that the proposed duties, and stated level of responsibility do not indicate a complexity or authority which is beyond that normally encountered in the occupational field. The director concluded that industry organizations prefer rather than require a bachelor's degree in a related specialty for the position of architectural drafter.

On appeal, counsel submitted a section from the California Code entitled the Architects Practice Act and contends that the petitioner requires a minimum of a B.A. in Architecture for the proffered position in order to comply with the requirements of the profession. Counsel asserts that the petitioner has submitted "competent evidence to show that the job offered is a specialty occupation, that the [p]etitioner requires a Bachelor's Degree for the position, and that the degree is common to the industry."

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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by architectural drafters found under the heading drafters. The *Handbook* indicates that 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.

The *Handbook* reports:

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.

* * * *

Technical institutes offer intensive technical training, but less general education than do junior and community colleges. Certificates or diplomas based on the completion of a certain number of course hours may be awarded. Many technical institutes offer 2-year associate degree programs, which are similar to, or part of, the programs offered by community colleges or State university systems. Their programs vary considerably in both length and type of courses offered. Some area vocational-technical schools are postsecondary public institutions that serve local students and emphasize the type of training preferred by local employers. Many offer introductory drafting instruction. Most require a high school diploma or its equivalent for admission. Other technical institutes are run by private, often for-profit, organizations, sometimes called proprietary schools.

The petitioner fails to establish the first criterion because the *Handbook* states that employers prefer applicants who have completed post-secondary school training. The *Handbook* indicates that a bachelor's degree is not required for an architectural drafter position. Accordingly, the petitioner cannot 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.

The petitioner did not submit evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel refers to the Architects Practice Act and states that this Act sets the standard for Architects & Engineers and their responsibility toward clients for whom service is provided. Counsel indicates that the petitioner requires a B.A. in Architecture as the minimum requirement for the position in order to comply with the requirements of the

profession. However, the record does not indicate that the Architects Practice Act requires a baccalaureate degree in architecture for the position of architectural drafter.

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. Again, the *Handbook* reveals that the proffered position is performed by architectural drafters, a position that does not require a bachelor's degree in a specific specialty.

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. It cannot be concluded 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. Once again, the *Handbook* reveals that the proffered position is performed by architectural drafters, occupations not requiring a bachelor's degree in a specific specialty.

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.