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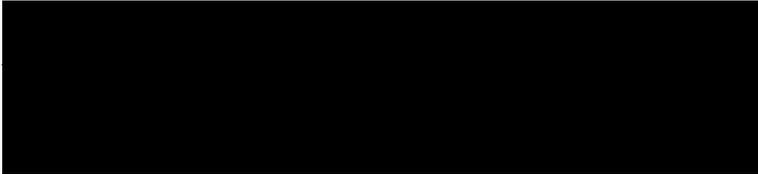
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U.S. Citizenship
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Services

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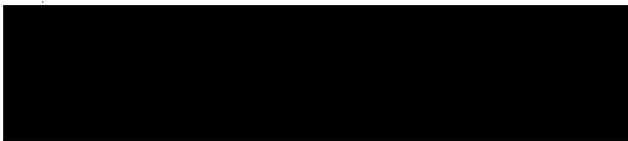
FILE: WAC 04 034 50636 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
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:



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 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 sustained. The petition will be approved.

The petitioner is a general construction company that seeks to employ the beneficiary as a cost engineer. 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, the petitioner submits a 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.

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 cost engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 28, 2003 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: providing cost analysis, cost review and independent cost estimates for new construction, renovation and facilities improvement projects; reviewing conceptual designs and performance specifications to develop cost estimates and cost analysis; organizing project information and distributing cost reports as required by the project; preparing project cost summary, time-phase charts and cost reduction curves; applying scientific principles and methods to undertake feasibility studies, value engineering and life-cycle costing; analyzing all factors affecting construction activities and developing the financial resources requirement for such activities, including but not limited to the study of raw materials and its inventory, manpower requirements, performance standards, critical paths, environmental and project site factors, construction schedules, contract specifications, performance bill and reports, budgeting and other construction criteria; preparing weekly project status reports, monthly production reports and change order status; preparing remittance schedules; preparing proposed field operations budgets; analyzing and interpreting trends in project budget status and on cost status outlook reports; performing quantity surveys and unit lists budgeting; managing material and equipment procuring; tracking manpower utilization and productivity; developing subcontractor interface and procurement; and processing administrative work, including subcontractor bidding project cost updates. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in engineering, construction management or the equivalent.

The director found that the proffered position was not a specialty occupation because the job is most like a cost estimator position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the proffered position is sufficiently complex to establish that it is a specialty occupation. The petitioner also states that the industry standard for a cost engineer or estimator is a bachelor's degree in engineering or a construction-related field.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO concurs with the director that many of the duties are similar to those of a cost estimator. A review of the cost estimator job description confirms the accuracy of the director's assessment that no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a cost estimator job.

Regarding parallel positions in the petitioner's industry, on appeal the petitioner submits four Internet job postings for cost estimators in the construction industry. Each posting indicates that a bachelor's degree in construction management, engineering or a related field is required. This indicates that there may be a trend in the industry toward requiring such a degree for entry into the field. There is no evidence, however, to show that the employers issuing the postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Therefore, the postings cannot be considered dispositive to establish an industry standard.

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

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 the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do appear to be so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The specific duties of the proffered position, combined with the information in the *Handbook* about the specialized knowledge required for certain cost estimator positions, establish that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation. Accordingly, the AAO shall withdraw 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.