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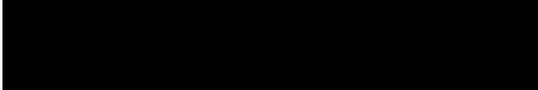
U.S. Citizenship
and Immigration
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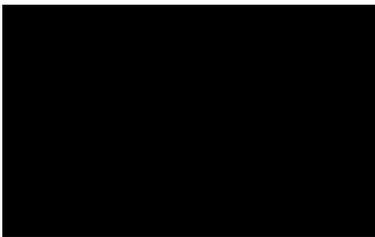


FILE: LIN 04 004 50460 Office: NEBRASKA SERVICE CENTER Date: NOV 01 2005

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

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 sustained. The petition will be approved.

The petitioner is a general contractor that seeks to employ the beneficiary as a construction manager. 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 states that the proposed position qualifies as a specialty occupation.

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 construction manager. 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 reviewing architectural plans and specifications and liaising and consulting with engineers, architects, owners, suppliers, and subcontractors; analyzing labor requirements and maximizing productivity; negotiating contracts; managing, supervising and coordinating subcontractors and vendors; reviewing and analyzing subcontractor proposals; studying contract documents to discover issues that cause unforeseen costs; preparing and monitoring project budgets and making adjustments for change orders; preparing project and daily reports; providing site management such as monitoring and enforcing project safety and quality control; creating and adjusting project schedules; allocating tasks to subordinates; analyzing and qualifying site work to measure subcontractor progress in order to calculate monthly project progress payments; preparing cost and expenditure statements; analyzing job cost reports to determine recommended action on overruns and monitor cash flow; providing office administration such as contract management, change orders, and progress claims; calculating new construction repair and renovation costs; preparing estimates of probable costs of materials, labor, and equipment based on contract bids, quotes, schematics, and project specifications; and providing project closeout. The petitioner requires a bachelor's degree in construction management or a closely related field for the proposed position.

The director stated that the Star Mountain Ranch Project (the Ranch Project) is a large construction project, but the petitioner's role in the project involved only the installation of lighting and audio video systems. The director found the submitted job postings unpersuasive in establishing that similar businesses require a bachelor's degree for a construction manager. According to the director, the proposed position resembles a construction manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree in a specific specialty. The director found that the proposed duties were not specialized and complex and that the petitioner did not in the past require the services of a person with a bachelor's degree in a specialized area.

On appeal, counsel states that the submitted project manual reflect that the petitioner is the contractor of the Ranch Project, and that its services on the Ranch Project involves more than the installation of lighting and an audio visual system. Counsel states that the Ranch Project requires complex construction management skills, and is a \$32 million dollar project. Counsel asserts that the *Handbook* reveals that large construction firms increasingly prefer individuals who combine industry work experience with a bachelor's degree in construction science, construction management, or civil engineering.

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 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 them is usually associated with the attainment of a baccalaureate or higher degree. The evidence in the record reflects that the petitioner is the contractor of the Ranch Project; that the Ranch Project was initially estimated at \$17 million dollars but had increased to \$24 million dollars; and that the Ranch Project is a complex construction project that will use the services of an architect; a landscape architect; a planner; a septic designer; mechanical/electrical, structural, and civil engineers; an interior designer; a lighting specialist; a food service and laundry designer; an acoustics specialist; an audio/visual networking specialist; and a geotechnical specialist. In light of the complexity of the Ranch Project, the AAO finds that the petitioner has shown that the nature of the proposed duties is specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty such as construction management. Accordingly, the petitioner established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO now turns to whether the beneficiary qualifies to perform the proposed position.

The record contains the beneficiary's transcript and bachelor's degree in general liberal arts studies with a concentration in construction management from Queensland University of Technology; and an educational evaluation from The Trustforte Corporation which indicates that the beneficiary's baccalaureate degree is equivalent to a bachelor of applied science degree in construction management from an accredited college or university in the United States. The AAO finds that this evidence establishes the beneficiary's qualifications for the proposed position.

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.