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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



*Dz*

FILE: SRC 04 094 50294 Office: TEXAS SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



NOV 01 2005

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 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 general construction company that seeks to employ the beneficiary as an electrical contracts manager. 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, counsel 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 an electrical contracts manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 11, 2004 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: negotiating contracts; hiring employees; supervising department activities; performing budget analysis for the designated department; coordinating business activities; overseeing work performed by employees; monitoring fee structures to ensure cost efficiency; managing electrical contracts from initial inquiry stage to completion of the project; initiating contact with clients; meeting with clients and subcontractor to discuss proposals and plans; preparing bids and negotiating electrical contracts; preparing the budget for contracts; estimating the cost of supplies/materials and labor for contractors; hiring subcontractors and electricians; contacting suppliers to ensure materials are delivered as scheduled; comparing actual labor and supplies/material reports against budgeted reports; overseeing the electrical design team; monitoring the quality of work by visiting worksites; ensuring that deadlines are met; approving any deviations from the contract; reporting to the owner with budget estimates and status of contracts on a regular basis; designing cost fee structure for all electrical contracts; researching the most cost efficient method to obtain supplies and materials; and determining target profit range based on length and difficulty of contract. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a related field or equivalent experience.

The director found that the proffered position was not a specialty occupation because the job is most like a construction manager 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, counsel states that the proffered position is not a construction manager, but is most like an administrative services administrator. Counsel also states that even if the position were a construction manager, it would be a specialty occupation. Counsel asserts that the position is sufficiently complex to establish that it is a specialty occupation. Counsel states that the duties of the position are consistent with the Department of Labor's *Dictionary of Occupational Titles (DOT)* description for contract administrators, and that these duties are similar to an administrative services manager in the *Handbook*.

Upon review of the record, the petitioner has not established one 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 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 construction manager. The duties of the proffered position also include those of a cost estimator. A review of the construction manager and cost estimator job descriptions 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 either position.

The petitioner did not submit evidence regarding parallel positions in the petitioner's industry. The record does not include any evidence from professional associations regarding an industry standard. Counsel did submit a position evaluation from HR Analytical Services, which states that the proffered position entails the core responsibilities of an administrative services manager, as described in the *Handbook*, and also entails the core responsibilities of a contract administrator, as described in the DOT. The evaluator stated that both of these positions are specialty occupations. The AAO concurs with the evaluator that an administrative services manager can be a specialty occupation. As noted, however, the AAO finds that the proffered position is a combination of a construction manager and a cost estimator. Regarding the DOT, it is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. 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 proffered position is a new position for the petitioner, and therefore, is not able to meet this criterion.

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 not appear to be so specialized and complex that they require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. While either construction managers or cost estimators may be proven to be of such complexity as to require a degree in a specialty, the petitioner did not establish how the specific duties of the proffered position relate to the petitioner's business. Counsel's reply to the director's request for evidence states, "[C]ontract sales are growing and [the petitioner] has decided to hire a qualified ECM [electrical contracts manager] to maintain the increase in sales." There is no evidence in the record regarding an increase in sales, or that the petitioner is involved in electrical work in any way. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of*

*California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The only evidence of the business operations submitted indicates that the petitioner has engaged in framing and preparing foundations. In addition, the AAO notes that the petitioner's gross annual income is reported at over \$1,000,000 on the Form I-129, but the tax return in the record indicates gross sales of \$472,000. The petitioner submitted a handwritten record, along with an adding machine tape, showing a number of over \$1,000,000, but with no explanation or substantiation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As related in the discussion above, the petitioner has not established that the proffered position, as it would be performed by the beneficiary for the petitioner's business, 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.