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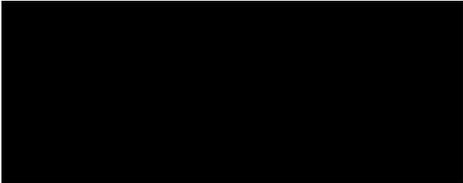


U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 048 50864 Office: CALIFORNIA SERVICE CENTER Date:

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:

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.

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 petitioner is a cabinet manufacturer that seeks to employ the beneficiary as a cost estimator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 estimator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 9, 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: developing the work breakdown structure and interrelationships; scheduling the work elements; retrieving and evaluating the historical data; developing and using cost-estimating relationships; determining make-or-buy criteria; identifying skill categories, skill levels, and labor rates; developing labor hours and material estimates; determining account overhead and administration costs; applying inflation and escalation cost factors; pricing the estimated costs and adjusting the estimate for bid strategy and risk analysis; and documenting the estimate and presenting it to management, contract personnel, and others. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in architectural studies or a related field.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 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's president states, in part, that the proffered position, which is that of a cost estimator for an old and established architectural millworking company, is a specialty occupation. The petitioner's president cites to the *Handbook* as evidence and states further that the record contains several similar job listings as further evidence of the degree requirement. The petitioner also states that the record contains sufficient evidence to demonstrate that it normally requires that its cost estimators hold a related bachelor's degree, and that the proposed duties are so complex as to require such a degree.

The proffered position is that of a cost estimator for the petitioning entity, which is a cabinet manufacturing business established in 1960, with 60 employees and a gross annual income \$5 million. A review of the *Handbook*, 2004-2005 edition, at page 79, finds that in the construction industry, employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. In this case, the beneficiary holds a "Diploma of Engineering" conferred by a German institution. An evaluator from a company that specializes in evaluating academic credentials concluded that the beneficiary possesses the U.S. equivalent of a Bachelor of Arts in Architectural Studies degree. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.