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FILE: EAC 03 223 54031 Office: VERMONT SERVICE CENTER Date: AUG 31 2006

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:



PHOTIC COPY

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Vermont Service Center on October 21, 2003. On February 7, 2004, the United States Department of State issued a statement recommending that the beneficiary's petition be revoked. On March 25, 2005, a Notice of Intent to Revoke (NOIR) was served on the petitioner by mailing a copy of same to the petitioner's attorney. The NOIR set forth the grounds for revocation of the approved Form I-129 petition, and informed the petitioner that it had 30 days in which to respond to the NOIR. The petitioner responded to the NOIR by correspondence dated April 21, 2005. On May 19, 2005 the director revoked the approval of the Form I-129 petition. 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 law firm. It seeks to employ the beneficiary as a contract administrator, and endeavors to classify her 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's determination revoking the Form I-129 petition was made after receiving a memorandum from the U.S. Consulate in Seoul, Korea calling into question the beneficiary's qualifications. The director noted that the consulate's notification that the beneficiary had previously been out of status in the United States was no longer relevant to the prior approval of the change of status, as the beneficiary had left the country. After reviewing the record, the director found that the proffered position did not qualify as a specialty occupation and that the beneficiary was not qualified to perform the services in the specialty occupation and revoked approval of the petition.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

The director complied with the notice requirements of 8 C.F.R. § 214.2(h)(11)(B), and his decision to revoke approval of the petition demonstrates that the director considered all relevant evidence as required by this regulatory provision.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the

petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the proffered position does not qualify as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner seeks to employ the beneficiary as a contract administrator. In this capacity the beneficiary would: maintain ongoing communications with business interests in South Korea and meet timetables and specifications for the development of the hotel projects together with the import and distribution of the marble, stone and glass products; perform advanced level work in writing, negotiating, awarding, and administering complex professional service contracts. Additional duties include:

- Develops the scope and specification for complex professional service contracts; writes contract requirements in conformance with city policies and State and federal laws, ordinances, rules and regulations;
- Reviews contract scope of services for completeness;
- Develops, compiles, conducts, and monitors advertisements, pre-bids, walk-throughs, bid opening, and evaluations of requests for qualifications, invitations for Bid, and Statement of Qualifications for required services and consultant contracts;
- Serves as liaison between law firm, state agencies, contractors, consultants, and clients;
- Researches and interprets contract provisions including explaining contract processes, penalties, and compliance terms to clients;
- Coordinates the renewal and extension of contracts; resolves discrepancies in contracts and prepares written documentation; demonstrates continuous effort to improve operations, decrease turnaround times, streamlining work processes, and working cooperatively and jointly to provide quality seamless service.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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 notes that in the initial petition, the petitioner submitted an excerpt from the *Handbook* and stated that the proffered position was similar to that of an administrative services manager (contracts administrator.) The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services. The *Handbook* reveals the nature of managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

Educational requirements for these managers vary widely, depending on the size and complexity

of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance.

The AAO notes that while a contracts administrator may be a specialty occupation, the petitioner has not established the duties of the position in relation to its business. The petitioner states that it has been "presented with several opportunities by Korean clients that involve hospitality services, construction and development in Pennsylvania, Maryland, New Jersey, South Korea and Hong Kong." The record contains no evidence of the petitioner's business transactions or evidence of complex contracts to be administered by the beneficiary in the United States or in Korea. The petitioner has not established the nature of its representation of domestic or international clients involved in construction or development projects. 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 petitioner has not established that the proffered position requires a four-year degree in a specialty based on the duties of the position in relation to its law practice.

The AAO notes that in response to the NOIR, the petitioner asserts that the position is that of a paralegal and legal assistant.

As noted in the *Handbook*, the training and educational requirements for paralegal and legal assistants include:

There are several ways to become a paralegal. The most common is through a community college paralegal program that leads to an associate's degree. The other common method of entry, mainly for those who already have a college degree, is through a program that leads to a certification in paralegal studies. A small number of schools also offer bachelor's and master's degrees in paralegal studies. Some employers train paralegals on the job, hiring college graduates with no legal experience or promoting experienced legal secretaries. Other entrants have experience in a technical field that is useful to law firms, such as a background in tax preparation for tax and estate practice or in criminal justice, nursing, or health administration for personal injury practice.

With respect to the paralegal duties, a baccalaureate or higher degree in a specific specialty or its equivalent is not, therefore, the minimum requirement for entry into the position. A baccalaureate degree is not required for a position as a paralegal. A degree in a wide range of disciplines will suffice. The AAO also notes that the duties of the position may involve some translation and/or interpretation. The *Handbook* does not indicate that a degree in a specialty is required to perform the duties of a translator or interpreter. The petitioner has, accordingly, failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

To satisfy the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to two letters. The first letter is from a practicing attorney. The author stated that based on his experience "hiring a contract administrator

would normally require a bachelor's degree credited from college together with a minimum of 3 years experience in the construction and building industry." The second letter is from a vice-president of a construction company. The author indicates that it is important for a contract administrator to have understanding and experience in the area of construction. Neither letter states that a degree in a specific specialty is required for the proffered position of contract administrator. Further, the nature of the petitioner's law practice and the extent of its involvement in construction projects in Korea or the United States is unclear. As noted by the director, the petitioner has failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations.

The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. The AAO finds the petitioner to have provided no evidence that would support such a finding. Accordingly, it has not established its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner asserts that it employs a secretary/paralegal who holds a bachelor's degree. The record does not indicate that the duties of the secretary/paralegal are similar to those of the proffered position. Further, the record contains no evidence of the worker's employment or a copy of the degree. 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 petitioner has not provided evidence of its normal hiring practices with regard to the proffered position and has not established it as a specialty occupation on this basis.

Finally, the record does not establish that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner asserts that the beneficiary will administer many complex contracts and negotiate with clients. The record contains no evidence of the petitioner's business transactions or evidence of complex contracts to be administered by the beneficiary to establish the complexity of the duties of the position. 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 petitioner has not established that the proffered position is that of an administrative services manager managing complex contracts. The petitioner has not established that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The second issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to perform the services of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains an experiential evaluation from the ICETS, a credentials evaluation service. That evaluation found that the beneficiary possessed the equivalent of a Bachelor of Arts degree in Business Administration based on her experience. It should be noted that a credentials evaluation service may only determine the equivalence of a beneficiary's foreign education to a United States education for the purpose of these proceedings. A beneficiary's past work experience may only be evaluated by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). The ICETS evaluation does not meet this requirement and is, therefore, of little evidentiary value.

CIS may determine whether the beneficiary's qualifications are the equivalent of a baccalaureate degree in a specialty under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The beneficiary has no university level education. The petitioner thus must establish that the beneficiary has at least 12 years of progressively responsible employment in positions directly related to the specialty. The AAO will review the evidence of record in order to determine whether the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. The petitioner submitted letters from two of the beneficiary's previous employers. The AAO finds that the letters provide no information about the level of specialized knowledge that the beneficiary applied, and no information about the degrees held by the subordinates, peers, and superiors with whom the beneficiary worked.

The petitioner did not submit evidence of the beneficiary's expertise in the specialty occupation from at least two recognized authorities in the same occupation. The opinion letter from two employers are insufficient to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i).

While the petitioner submits a sworn statement asserting that the beneficiary is qualified for the position, the assertions are unsupported by objective documentation. Simply going on the 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 190 (Reg. Comm. 1972)).

As stated above, pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the beneficiary did not qualify to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C). Approval of the petition constituted gross error, as the petition indicated that a bachelor's degree was required for the proffered position and the petitioner did not establish that the beneficiary had obtained the equivalent of a baccalaureate degree pursuant to the above cited regulations. The director appropriately revoked the Form I-129 petition.

The record establishes that the proffered position is not a specialty occupation and that the beneficiary is not qualified to perform services of a specialty occupation. The director's decision shall, therefore, not be disturbed.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is revoked.