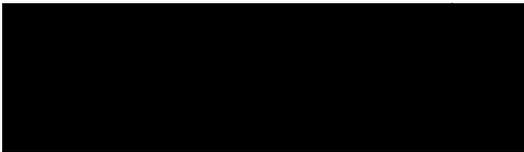


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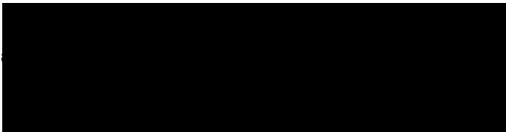
*Dr*

FILE: WAC 03 174 52873 Office: CALIFORNIA SERVICE CENTER Date: **JUN 15 2006**

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:



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 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 healthcare facility with six employees and an estimated gross annual income of \$403,000, and seeks to employ the beneficiary as a preventive maintenance coordinator. 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 does not qualify as a specialty occupation. On appeal counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 fields 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 record of proceeding before the AAO contains: (1) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a preventive maintenance coordinator. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Inspect and analyze a newly acquired building facility to determine upgrades, renovations, and equipment to be reinstalled to comply with local building codes and state regulations;
- Prepare a detailed report of non-complying portions of the facility and propose plans or designs to update and conform to local building codes and state regulations;
- Monitor and evaluate existing equipment on the premises to ensure compliance with state regulations;
- Be responsible for safety issues related to buildings or grounds, including fenced pools, maintenance, lighting, heating, cooling and required phone or signal systems;
- Coordinate with state regulators to ensure modification compliance/permitting;
- Maintain regulatory relationships with the Office of Regulations Development;
- Plan and coordinate a schedule of preventive maintenance for facilities;
- Record maintenance to determine the optimum frequency of preventive maintenance;
- Study operation schedules and confer with other staff to determine when planned maintenance will last interfere with facility operation; and
- Direct and coordinate activities of any hired maintenance contractors.

The petitioner requires a minimum of a bachelor's degree in civil engineering or a related field for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though vaguely described in relation to the petitioner's physical facilities and the nature of its business, appear to be those noted for administrative service managers, not industrial safety and health engineers as stated by the petitioner, or construction and building inspectors as determined by the director. The *Handbook* notes that these managers perform a broad range of duties in virtually every sector of the economy. They manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials, scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal. In small organizations, a single administrative services manager may oversee all support services. In larger ones, however, first-line administrative services managers often report to mid-level managers who, in turn, report to top-level managers. As the size of the firm increases, administrative services managers are more likely to specialize in support activities. Because of the range of administrative services required by organizations, the duties performed by these managers varies significantly. The *Handbook* notes that:

Administrative services managers who work as facility managers plan, design, and manage buildings and grounds in addition to people. They are responsible for coordinating the physical workplace with the people and work of an organization. This task requires integrating the principles of business administration, architecture, and behavioral and engineering science. Although the specific tasks designed to facility managers vary substantially depending on the organization, the duties fall into several categories, relating to operations and maintenance, real estate, project planning and management, communication, finance, quality assessment, facility function, technology integration, and management of human and environmental factors. Tasks within these broad categories may include space and workplace planning, budgeting, purchase and sale of real estate, lease management, renovations, or architectural planning and design. Facility managers may suggest and oversee renovation projects for a variety of reasons, ranging from improving efficiency to ensuring that facilities meet government regulations and environmental, health, and security standards. Additionally, facility managers continually monitor the facility to ensure that it remains safe, secure and well maintained. Often, the facility manager is responsible for directing staff, including maintenance, grounds, and custodial workers.

The *Handbook* states that educational requirements for these managers vary widely, depending on the size and complexity of the organizations. Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration, or facility management. Not all degrees deemed acceptable for the position are closely related, however. For example, a general degree in business administration would not be closely related to engineering or architecture, unless the business administration degree included a specific course of study related to engineering or architecture. Thus, the

proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) since a baccalaureate or higher degree in a specific specialty is not normally required for entry into the position.

The petitioner has failed to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position, or that it normally requires a degree in a specific specialty for entry into the position, and offers no evidence in this regard. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The petitioner has failed to establish the complexity of the duties of the offered position in relation to its business operations. The record does not establish that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they 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 record contains no evidence describing the facility to be managed by the petitioner. Nor does the evidence establish that the petitioner owns or leases a facility to be managed by the beneficiary, or has a business plan to purchase any such facility in the foreseeable future. The petitioner describes itself as a health care facility with six employees. The record does not contain a copy of the petitioner's license to operate a healthcare facility. The record is void of evidence establishing that the petitioner has the described work available to employ the beneficiary in the capacity requested on the Form I-129 petition. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See 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)). The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4), nor has it demonstrated that a qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). Based upon the foregoing, the petition must be denied.

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 and the appeal shall accordingly be dismissed.

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