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FILE: SRC 04 001 50436 Office: TEXAS SERVICE CENTER

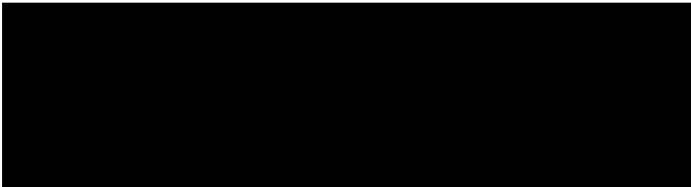
Date: JUL 17 2006

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a construction company. It seeks to employ the beneficiary as a contract administrator and to extend his classification 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 on the ground that the record did not establish that the proffered 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.

To qualify as a specialty occupation the position must meet one of the following criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A):

- (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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a construction company engaged in the field of housing construction. The petitioner states that it was established in 1998, achieved a gross income of \$2.8 million by 2001 and \$3.5 million by 2003, and had five employees at the time the instant petition was filed. In a letter accompanying the Form I-129 the petitioner indicated that it needed a contract administrator to manage its construction projects, which numbered ten at the time, and proposed to hire the beneficiary for three years at an annual salary of \$31,000. The duties of the position were described as follows:

[The beneficiary] will direct activities concerned with construction contracts, including leasing of and purchase of equipment, materials, and products. He will also manage the contractual relationships for the construction projects, including those with subcontractors. [The beneficiary] will examine performance requirements, delivery schedules, and estimates of costs of material, equipment, and production to ensure completeness and accuracy. He will prepare bids, process specifications, test and progress reports, and other exhibits that may be required. He will review bids from other firms for conformity to contract requirements and determine acceptable bids. [The beneficiary] will negotiate contracts with bidders, vendors and other suppliers. He will also request and approve amendments to or extensions of contracts. [The beneficiary] will also be in charge of advising the planning and other departments of contractual rights and obligations.

According to the petitioner, the minimum educational requirement for the position is a bachelor's degree in business administration. As evidence thereof the petitioner has submitted numerous internet job advertisements for contract administrator positions. The beneficiary is qualified for the proffered position, the petitioner declares, based on his completion of a ten-semester program of business administration at the Corporacion Universitaria de la Costa in Barranquilla, Colombia, in the years 1981-1985, for which he was granted a diploma on June 28, 1986. A report submitted with the petition from an educational credentials evaluation service, the Foundation for International Services, Inc. ("FIS"), declares that the beneficiary's diploma is equivalent to a bachelor's degree in business administration from an accredited college or university in the United States.

In response to the RFE the petitioner submitted a revised report from FIS which, after taking into account the beneficiary's nine years of work as a contract administrator in Colombia, declared that the beneficiary's education and experience is equivalent to a bachelor's degree in business administration with a concentration in contract administration from an accredited U.S. college or university. The petitioner submitted an excerpt from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* on administrative services managers which states that "[m]anagers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources or finance," as well as letters from two other construction companies in Miami, Florida, stating that they require their contract administrators to have a bachelor's degree in business administration or the equivalent. The petitioner pointed out that the beneficiary was previously granted H-1B status in February 2001 pursuant to a petition filed by a pool service company in Miami, and cited a CIS policy memorandum on the adjudication of extension petitions as authority for the claim that the instant petition should be approved.

In her decision the director found that the proffered position does not qualify as a specialty occupation. The director did not agree with the petitioner's categorization of the position as an administrative services

manager, as described in the DOL *Handbook*. The director found that the position fits within the *Handbook*'s broad occupational category of purchasing managers, buyers, and purchasing agents, and cited information in the *Handbook* indicating that there are no uniform educational requirements for such positions. Referring to the letters from two other construction companies in Miami, the director declared that they were insufficient to establish an industry standard and that the requirement of a bachelor's degree in the broad field of business administration, without a particular specialty, would not meet the standard of a specialty occupation in any event. The director also found that the CIS memorandum on the adjudication of extension petitions is inapplicable because the instant petitioner is a new employer. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the proffered position qualifies as a specialty occupation under all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), and complains that the director's decision did not address the criteria. Supplementing the 20 job advertisements submitted earlier, which counsel points out were ignored by the director, an additional 40 job advertisements for contractor administrator positions have been submitted as evidence of a degree requirement for the proffered position. Counsel also submits an evaluation of the position's educational requirements from a university professor. According to counsel the DOL *Handbook*'s entry on purchasing managers, buyers, and purchasing agents does not directly apply to the proffered position because the *Handbook* refers only to retail, wholesale, and manufacturing firms, whereas the petitioner's business is a construction company. In counsel's view, the job duties of a contract administrator for a construction company – which involve negotiating with subcontractors, analyzing the cost of labor, equipment and materials, other cost estimates, and ensuring the maintenance of contract standards – require more specialized knowledge than the job duties of a contract administrator for other types of companies. Counsel asserts that the director misinterpreted the *Handbook*'s description of the educational requirements for the occupation, which range from a baccalaureate to a master's degree depending on the type of position. Though the director found that the proffered position was not that of an administrative services manager, counsel points to the sentence within that occupational category referring to the educational requirements of a contract administrator as applicable to the proffered position and indicative that a bachelor's degree in business, human resources, or finance is required for the position. According to counsel, other DOL resources, including the *Dictionary of Occupational Titles (DOT)* and the *O\*NET* confirm that a bachelor's degree is required for contract administrator positions. Lastly, counsel contends that a bachelor's degree in business administration is a specialty degree, and the employer's requirement of such a degree, even without a concentration in contract administration, would be sufficient to establish the proffered position as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also scrutinizes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the proffered position does not fit within the *Handbook's* occupational category of purchasing managers, buyers, and purchasing agents. Workers in that occupation are employed by retail, wholesale, and manufacturing companies, not construction companies like the petitioner. The AAO agrees with the petitioner's original classification of the proffered position as a type of administrative services manager. The *Handbook* describes that occupation, in pertinent part, as follows:

Administrative services managers . . . coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers 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 . . . . As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers, contract administrators, or unclaimed property officers . . . .

[A]dministrative 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 . . . .

*Handbook*, 2006-07 edition, at 25. With respect to the educational requirements for administrative services managers, the *Handbook* states, in pertinent part, as follows:

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

[M]anagers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. Regardless of major, the curriculum should include courses in office technology, accounting, business mathematics, computer applications, human resources, and business law.

*Id.* at 26. Based on the foregoing information, the AAO determines that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

- (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.

With respect to the beneficiary's qualifications for the proffered position in this case, the first evaluation report of the beneficiary's academic credentials from FIS declares that the diploma he received in 1986 for the five years of coursework he completed at the Corporacion Universitaria de la Costa is equivalent to a bachelor's degree in business administration from an accredited U.S. college or university. The record includes the beneficiary's curriculum showing that his five-year program of business administration included sufficient specialization in coursework related to the field of contract administration to qualify the beneficiary to perform the services of the specialty occupation.

Thus, the petitioner has demonstrated that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation. The AAO will sustain the appeal and approve the petition.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

**ORDER:** The appeal is sustained. The petition is approved.