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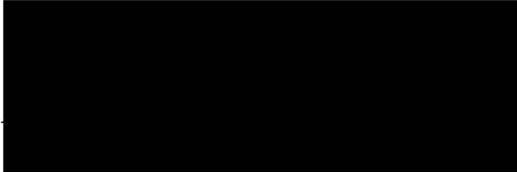
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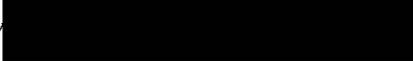
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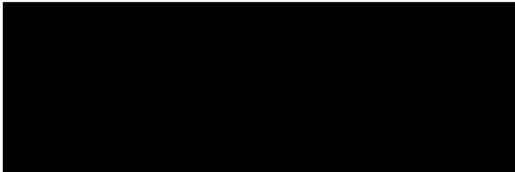


FILE: SRC 04 253 53423 Office: TEXAS SERVICE CENTER Date: **JUL 17 2006**

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 documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wieman, 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 cleaning services business that seeks to employ the beneficiary as a project control analyst and 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 denied the petition on the basis that the position is not a specialty occupation. On appeal, the petitioner submits a letter and additional documents.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (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 seeks the beneficiary's services as a project control analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company's support letter; the petitioner's response to the RFE; and the letter submitted on appeal. According to this evidence, the beneficiary would perform duties that entail: planning, tracking analysis, and reporting on projects of varying contract size, type, complexity, and level of risk without considerable direction; overseeing the administration of all aspects of company projects with organizational goals as well as the execution of project timelines; implementing financial policies and procedures to support projects; establishing and maintaining cost/schedule baseline, budget, and financial policies to permit compliance and safety and quality processes; organizing and maintaining the optimization process including agreement with regulatory agencies. The petitioner stated that the job duties required the beneficiary to possess at least a bachelor's degree in business administration.

The director found that that the duties reflected those normally performed by office managers and that the petitioner failed to establish that the position offered met any of the required criteria for classification as a specialty occupation. The director also found that the petitioner failed to establish that the beneficiary possessed the equivalent a U.S. bachelor's degree in a specific specialty.

On appeal, the petitioner asserts that this position is one that requires a bachelor's degree because job announcements for other jobs with the same title require a bachelor's degree. The petitioner states that beneficiary has the equivalent of a bachelor's degree in business administration.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough of the record, the AAO finds that the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

In his denial, the director found that the proposed position was not that of a project control analyst because the beneficiary would mostly be performing the duties of an office manager. The AAO does not agree with this aspect of the director's conclusion. Notwithstanding this, the AAO does not find that the petitioner has established that the proposed duties are those of a project control analyst.

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 petitioner has identified the proposed position as that of a project control analyst. Therefore, the AAO turns first to the 2006-07 *Handbook's* discussion of the duties of project control specialists, who are included within the occupational title of cost estimators:

Cost estimators develop the cost information that business owners or managers need to make a bid for a contract or to decide whether a proposed new product will be profitable. They also determine which endeavors are making a profit.

Regardless of the industry in which they work, estimators compile and analyze data on all of the factors that can influence costs—such as materials, labor, location, and special machinery

requirements, including computer hardware and software. Job duties vary widely depending on the type and size of the project.

The methods and motivations for estimating costs can differ greatly by industry. On a construction project, for example, the estimating process begins with the decision to submit a bid. After reviewing various preliminary drawings and specifications, the estimator visits the site of the proposed project. The estimator needs to gather information on access to the site and the availability of electricity, water, and other services, as well as on surface topography and drainage. The information developed during the site visit usually is recorded in a signed report that is included in the final project estimate.

After the site visit, the estimator determines the quantity of materials and labor the firm will need to furnish. This process, called the quantity survey or “takeoff,” involves completing standard estimating forms, filling in dimensions, numbers of units, and other information. A cost estimator working for a general contractor, for example, estimates the costs of all of the items that the contractor must provide. Although subcontractors estimate their costs as part of their own bidding process, the general contractor’s cost estimator often analyzes bids made by subcontractors as well. Also during the takeoff process, the estimator must make decisions concerning equipment needs, the sequence of operations, the size of the crew required, and physical constraints at the site. Allowances for wasted materials, inclement weather, shipping delays, and other factors that may increase costs also must be incorporated in the estimate.

On completion of the quantity surveys, the estimator prepares a cost summary for the entire project, including the costs of labor, equipment, materials, subcontracts, overhead, taxes, insurance, markup, and any other costs that may affect the project. The chief estimator then prepares the bid proposal for submission to the owner.

The cost estimator then prepares time-phase charts and learning curves. Time-phase charts indicate the time required for tool design and fabrication, tool “debugging”—finding and correcting all problems—manufacturing of parts, assembly, and testing. Learning curves graphically represent the rate at which the performance of workers producing parts for the new product improves with practice. These curves are commonly called “cost reduction” curves, because many problems—such as engineering changes, rework, shortages of parts, and lack of operator skills—diminish as the number of units produced increases, resulting in lower unit costs.

Using all of this information, the estimator then calculates the standard labor hours necessary to produce a specified number of units. Standard labor hours are then converted to dollar values, to which are added factors for waste, overhead, and profit to yield the unit cost in dollars. The estimator then compares the cost of purchasing parts with the firm’s cost of manufacturing them to determine which is cheaper.

Based on the petitioner’s description and a thorough review of the *Handbook*, the AAO finds that the petitioner’s listing of the proposed duties is so generalized and nonspecific that it precludes the AAO from determining precisely what tasks the beneficiary would perform for the petitioner on a daily basis. The petitioner must do more than list duties that resemble the responsibilities that the *Handbook* ascribes to a

particular occupation. In order for CIS to analyze whether the position requires the theoretical and practical application of a body of highly specialized knowledge obtained by a bachelor's degree in a specific specialty, the petitioner must describe the duties in relation to its business operations. For example, although the petitioner has stated that the beneficiary would plan and report on projects of varying contract size, type, complexity, and level of risk, it offers no indication how the beneficiary would plan these projects or what these projects would consist of. The petitioner offers no explanation of what specific operational problems the beneficiary would identify and analyze in the context of its cleaning service. In light of the general job description offered here, the AAO cannot identify the beneficiary's specific tasks, and thereby, whether the position requires a degree in a specialty to perform the duties. Furthermore, without a reliable description of the concrete work and specific issues that would engage the beneficiary, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation.

The AAO turns to the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A)(1) – a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The *Handbook's* discussion of the educational requirements for project control analysts indicates that such positions normally require an advanced degree in a specific specialty. Without a detailed description of the duties the beneficiary will perform in relation to the petitioner's business, however, the AAO is unable to determine whether the proposed responsibilities would require the beneficiary to hold the minimum of a bachelor's or higher degree or its equivalent, in a related field, to perform those duties. The record lacks evidence of specific work and specific problems or issues to illustrate and explain why actual on-the-job performance requires the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific specialty. Thus, the AAO finds the record does not establish that the proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO turns next to the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). On appeal, the petitioner submits four Internet job advertisements for project control analysts. These advertisements were published by four firms that did not identify the nature of their businesses, and do not establish that they are organizations similar to the petitioner, a cleaning services company. Moreover, the information submitted by the petitioner about the proposed duties is too general to determine whether the employment described in the advertisements is parallel to that of the proffered position. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry regarding an industry-wide degree requirement. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine if a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. The petitioner did not document a history of hiring those with bachelor's degrees in a specific specialty for the proposed position. In the absence of an employment history for the proposed position, the petitioner cannot establish that its proposed position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field of study. As discussed above, the proposed position is described in general terms that do not establish that the actual work to be performed would require at least a bachelor's degree in a specific specialty, and the record lacks sufficient evidence that would establish that the nature of the proposed duties is so specialized and complex as to be associated with a bachelor's degree in a specific field such as mathematics, statistics, or a related field. Consequently, the petitioner fails to demonstrate that the proposed position is a specialty occupation based on the complexity, uniqueness or specialized nature of its duties.

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the director's decision in this regard. As to the beneficiary's qualifications, the AAO has determined that the petition cannot be approved on the basis that the proposed position is not a specialty occupation. **Therefore, it will not address the issue of the beneficiary's qualifications.** A beneficiary's credentials to perform a particular job are relevant only when a job is found to be a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.