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FILE: EAC 04 223 52794 Office: VERMONT SERVICE CENTER Date: **MAY 08 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 acting director of the Vermont Service Center 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 surveying and engineering firm with seven employees, including five field land surveyors. It seeks to employ the beneficiary as a land surveyor 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 based on her determination that the record failed to establish that the proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (3) Form I-290B, with counsel's brief and additional evidence. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a land surveyor. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s July 29, 2004 letter of support and its September 7, 2004 response to the director’s request for evidence. The petitioner has indicated that the responsibilities of the proffered position would require the beneficiary to:

- Research land records;
- Research horizontal and vertical geodetic controls to obtain controls to initiate field survey operations;
- Validate geodetic controls, performing field work including supervision of survey technicians in the location and verification of survey points;
- Verify that improvements conform to local, state and federal regulations;
- Construct an electronic record of all relevant elevations, improvements, boundaries, and environmental features using a Computer Aided Drafting (CAD) program;
- Review title report for ALTA/ACSM land title surveys to reconcile title report and field survey and report any potential errors and encumbrances on property;
- Create report reconciling anomalies/flaws in public records with the filed research and any discrepancies with regulations; and
- Act as a field consultant as required to assist in directing different phases of construction.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its

equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The 2006-2007 edition of the *Handbook* discusses the employment of land surveyors under the occupational title of surveyors, cartographers, photogrammetrists, and surveying technicians.<sup>1</sup> It describes the work of land surveyors as follows:

Surveyors measure distances, directions, and angles between points and elevations of points, lines, and contours on, above, and below the earth's surface. In the field they select known survey reference points, and determine the precise location of important features in the survey area. Surveyors research legal records, look for evidence of previous boundaries, and analyze the data to determine the location of boundary lines. They also record the results of surveys, verify the accuracy of data, and prepare plots, maps, and reports. Surveyors who establish boundaries must be licensed by the State in which they work. Surveyors are sometimes called to provide expert testimony in court cases concerning matters pertaining to surveying.

With regard to the academic preparation required for employment as a land surveyor, the *Handbook* indicates that:

[m]ost people prepare for a career as a licensed surveyor by combining postsecondary school courses in surveying with extensive on-the-job training. However, as technology advances, a 4-year college degree is increasingly becoming a prerequisite. A number of universities now offer 4-year programs leading to a bachelor's degree in surveying. Junior and community colleges, technical institutes, and vocational schools offer 1-year, 2-year, and 3-year programs in both surveying and surveying technology.

All 50 States and all U.S. territories license surveyors. For licensure, most State licensing boards require that individuals pass a written examination given by the National Council of Examiners for Engineering and Surveying (NCEES). Most States also require surveyors to pass a written examination prepared by the State licensing board. In addition, candidates must meet varying standards of formal education and work experience in the field.

Although the *Handbook* indicates that persons seeking entry-level employment as land surveyors may obtain work without holding the minimum of a baccalaureate degree, it also reports that surveyors are subject to the

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<sup>1</sup> *Occupational Outlook Handbook*, 2006-2007 Edition, at [www.bls.gov/oco/ocos040.htm](http://www.bls.gov/oco/ocos040.htm).

licensing requirements of the state in which they will be employed. Accordingly, the AAO has reviewed licensing requirements for land surveyors in the State of Maryland, the location of the proffered employment, to determine whether they would impose a degree requirement on the beneficiary.

In response to the director's request for evidence, the petitioner provided a copy of the State of Maryland's licensing requirements for land surveyors, offering the submitted materials as proof that the proffered position imposes a degree requirement on the beneficiary. While the AAO notes that the State Board for Professional Land Surveyors, Maryland Division of Occupational and Professional Licensing offers two licensing options based on the attainment of a four-year college degree, it also finds the material submitted by the petitioner to establish that Maryland land surveyor licenses may be obtained by individuals without a baccalaureate degree solely on the basis of their experience. Accordingly, the record does not demonstrate that educational requirements for land surveyors in Maryland may be distinguished from those described by the *Handbook* for the occupation of surveyors nationally. As the *Handbook* does not indicate that the occupation of land surveyors requires the minimum of a baccalaureate degree in a specific specialty, the proffered position is not established as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.<sup>2</sup>

On appeal, counsel contends that the *Handbook's* discussion of land surveyors does indicate that the occupation requires the minimum of a baccalaureate degree, citing the following language from the 2004- 2005 edition:

In the past, many with little formal training in surveying started as members of survey crews and worked their way up to become licensed surveyors. However, because of advancing technology and rising licensing standards, formal education requirements are increasing . . . . Generally, the quickest route to licensure is a combination of 4 years of college, up to 4 years of experience under the supervision of an experienced surveyor (a few States do not require any such experience), and passing the licensing examinations. An increasing number of States require a bachelor's degree in surveying or in a closely related field, such as civil engineering . . . regardless of the number of years of experience . . . . Beginners with postsecondary school training in surveying usually can start as technicians or assistants.

Language virtually identical to that above is also found in the 2006-2007 edition of the *Handbook*. It does not, however, prove that individuals seeking employment as land surveyors are required to hold the minimum of a baccalaureate degree. Although the *Handbook* reports that employers increasingly seek degreed land surveyors, it does not indicate that a degree is a requirement for such employment, the standard imposed by the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, while the *Handbook* states that the quickest route to state licensure may be found with four years of college, the State of Maryland's licensing options, as documented by the petitioner, are proof that licensure may also be obtained without a college degree.

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<sup>2</sup> A reading of the acting director's denial indicates that it may, in part, have been based on her finding that the annual salary of \$24,525 being offered to the beneficiary indicated that a degree was not required for the proffered position. Rate of pay is not, however, an independent ground on which to base a denial. If the acting director did rely on the proffered salary as a reason for denying the petition, the AAO withdraws her finding in this regard.

Accordingly, counsel's assertions regarding the degree requirement for the occupation of land surveyors are not persuasive.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(A), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant case, the petitioner contends that its industry requires land surveyors to have baccalaureate degrees in a directly related specialty such as geodetic engineering, mine surveying, geological or civil engineering. In support of its assertions, it has submitted a series of newspaper advertisements for land surveyor positions from two other organizations, one of which appears to be a local government agency, and a letter from another local survey/engineering firm that employs land surveyors. While the advertisements indicate a degree requirement for the positions advertised and the letter attests to an industry practice of hiring degreed land surveyors, they do not establish the petitioner's degree requirement as the norm within its industry, as they do not satisfy the criterion's first prong – a degree requirement in parallel positions among similar organizations.

The print advertisements provide too little information regarding the duties of either land surveyor position to determine whether they are parallel to those of the proffered position. They also fail to establish that the jobs offered are in organizations similar to the petitioner. One listing appears to advertise a job opening in a local government agency and the other does not identify the employer seeking a land surveyor.

The letter from the local survey/engineering firm, an organization that appears to be similar to the petitioner, also fails to establish the petitioner's degree requirement as an industry norm. While the firm states that industry practice is to require degreed land surveyors, the record provides no evidence that would support its authority to speak for the hiring practices of similarly-sized businesses in its industry. Going on record without supporting documentation is not sufficient to meet the petitioner's 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 Dec. 190 (Reg. Comm. 1972)). While the firm claims to employ three degreed land surveyors, it has offered no documentation to establish its employment of the individuals named or evidence of their degrees. *Id.* Neither has it provided a description of the duties performed by the three land surveyors to establish these positions as parallel to the proffered position. Moreover, even if established, the hiring practices of a single organization are insufficient proof of an industry-wide standard.

The AAO also concludes that the record before it does not establish that petitioner's 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. It finds no evidence that would support such a finding. Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

To determine whether a proffered position may be established as a specialty occupation under the third criterion – the employer normally requires a degree or its equivalent for the position – the AAO usually 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. In the instant case, the petitioner has submitted evidence to establish that it employs

five land surveyors, all of whom have at least a baccalaureate degree in a field directly related to their employment. While the AAO finds the record to establish that the petitioner employs the individuals identified as its land surveyors, the petitioner has submitted insufficient evidence to demonstrate that all five hold the degrees claimed.

The AAO finds the evidence of record to establish the educational credentials of only two of the petitioner's land surveyors, [REDACTED] and [REDACTED] both of whom hold foreign undergraduate degrees in geodetic engineering from the University of Science and Technology in Kumasi, Ghana. The petitioner has submitted evidence that [REDACTED] also holds a master's degree in engineering from Purdue University and has provided an evaluation of [REDACTED] foreign degree and academic transcripts from International Credentialing Associates, Inc., which finds him to hold the equivalent of a U.S. degree in geomatics engineering. 8 C.F.R. § 214.2(h)(4)(D)(3).

To establish the degrees held by its president, [REDACTED] the petitioner has submitted copies of his University of Maryland master's degree and his baccalaureate diploma, also from the University of Science and Technology in Kumasi, Ghana. However, the University of Maryland diploma does not indicate the field in which the degree was awarded and the degree from the University of Science and Technology is not accompanied by an evaluation from a reliable academic credentials evaluation service to establish a degree equivalency. Therefore, the record does not establish that [REDACTED] holds a degree in a field directly related to his work as a land surveyor.

The documentation for the petitioner's other two land surveyors also fails to satisfy evidentiary requirements. Although the petitioner submits a credentials evaluation for the four-year foreign degree held by [REDACTED] [REDACTED] the record provides only two years of academic transcripts and does not include a copy of [REDACTED] [REDACTED] diploma from the University of Science and Technology in Ghana. The credentials evaluation for Frank Deegbe, a land surveyor employed by the petitioner on a part-time basis, identifies a General Certification of Education Advanced Level that when combined with his three-year degree in mine surveying from the University of Science and Technology in Kumasi, Ghana provides him with the equivalent of a U.S. baccalaureate degree in mining engineering. However, the record does not include a copy of this certificate, a transcript of the courses required for the award of such a certificate, or an explanation as to why the evaluator concluded that the certificate was the equivalent of 30 semester units of study toward a bachelor's degree. Accordingly, the AAO will not accept the credentials evaluations provided to establish the degree equivalencies of [REDACTED] and [REDACTED]. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. Therefore to establish the proffered position as a specialty occupation under this criterion, the record must demonstrate that the position's duties are more specialized and complex than those normally performed by land surveyors, employment that the *Handbook* indicates does not require the minimum of a baccalaureate degree in a directly related field. However, the AAO does not find the record to contain evidence that would distinguish the duties of the proffered position from those

normally performed by other land surveyors. Nor has the petitioner contended that the duties of the proffered position set it apart from other land surveyor jobs. Accordingly, the proffered position has not been established as a specialty occupation under the fourth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Therefore, the appeal will be dismissed.

On appeal, counsel indicates that CIS has previously approved four H-1B petitions for land surveyors filed by his office and that two of the beneficiaries are employed by the petitioner as land surveyors. He contends that the denial of the instant petition is a deviation from previous CIS policy of accepting the position of land surveyor as a specialty occupation. However, the fact that CIS previously approved petitions for what appear to be similar positions is not a basis for approving the instant petition. CIS is not bound to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). Further, the AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a nonimmigrant petition on behalf of a previous beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248, F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Beyond the decision of the director, the AAO does not find the record to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In the instant case, the proffered position would require the beneficiary to perform the duties of a land surveyor, employment licensed by all 50 states and the District of Columbia. The record does not, however, indicate that the beneficiary is licensed as a land surveyor in the State of Maryland, the location of the proffered employment.

At the time of filing, the petitioner contended that, in Maryland, land surveyors may work under a licensed professional in their fields until they are able to sit for a licensing examination. The record does not, however, support this assertion. Although the petitioner has stated that it has submitted a copy of a letter from the Maryland Department of Labor, Licensing and Regulation to support its claim, the AAO does not find the referenced letter in the evidence of record. Neither does it find the record to contain a copy of the Maryland surveyor's license issued to the petitioner's president, which the petitioner claims would allow him to supervise the petitioner's performance of the proffered position's duties. Therefore, the beneficiary is not licensed to work as a land surveyor in Maryland and the petitioner has failed to prove that he may perform the duties of the proffered position without a license. For this reason, as well, the petition will be denied.

For reasons related in the preceding discussion, the record does not establish the proffered position as a specialty occupation or the beneficiary as qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the petitioner's denial of the petition.

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 met that burden.

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