



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 130 54200 Office: CALIFORNIA SERVICE CENTER Date: MAY 12 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:
[Redacted]

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is an industrial construction and maintenance business that seeks to employ the beneficiary as a junior civil estimator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 is not a specialty occupation. On motion, counsel submits a brief.

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 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation; (6) the AAO's decision to dismiss the appeal; and (7) the petitioner's motion to reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a junior civil estimator. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 15, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing the cost information for clients'/company's approval; preparing budgets, estimates, and schedules for approval by the client/owner; preparing and coordinating construction worksheet budgets and schedules; preparing material, equipment, and subcontractor requisitions; gathering and negotiating quotes; ordering and preparing purchase orders and subcontract agreements; tracking actual expenditures on materials, labor, equipment, subcontracts, and overhead costs; preparing and issuing cost reports; negotiating "CORs"; updating approved "COs" in budget and in schedules; preparing "RFIs"; coordinating and assessing construction progress; and preparing progress reports for monthly billings. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in civil engineering.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On motion, counsel states, in part, that the *Dictionary of Occupational Titles (DOT)* should have been used to establish that the proffered position is a professional one. Counsel states further that the position of estimator has evolved over time as a professional or specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first 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; 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 often considered by CIS when determining these criteria include: whether the *Handbook* reports that 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Cost Estimators training requirements in the *Handbook*, 2006-2007 edition, finds that, while employers increasingly prefer to hire individuals with specific degrees for cost estimator positions, a

baccalaureate degree in a specific specialty is not required.¹ Counsel's assertion that the position of estimator has evolved over time as a professional or specialty occupation is noted. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT* classification of occupations as "Professional, Technical, and Managerial" is not based upon the statutory and regulatory criteria for specialty occupations that govern this proceeding. Accordingly, the fact that the Cost Estimator occupation is included within the aforesaid classification is not probative. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted various Internet job postings for cost estimators. It is noted that the AAO provided a detailed discussion of these advertisements in its November 16, 2004 decision and concluded that they do not provide sufficient evidence to establish that similar businesses commonly require a baccalaureate degree for entry into parallel positions. On motion, counsel does not address this portion of the AAO's findings. As such, it will not be discussed further.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on motion, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent,

¹ A Google search at <http://www.careerbuilder.com/> finds a civil estimator job for the petitioner with the minimum qualification requirements described as: 12th grade education or equivalent; minimum 5 years experience as an estimator in one of the following disciplines: Piping or Civil; good oral and written communication skills; computer literate with Microsoft Office, Microsoft Projects, Excel, and Primavera knowledge; ability to work with site supervision to coordinate and expedite projects. These requirements confirm the position of the DOL in its *Handbook*, namely that a cost estimator position does not require a bachelor's degree in a specialty.

in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director'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 sustained that burden.

ORDER: The previous decision of the AAO, dated November 16, 2004, is affirmed. The petition is denied.