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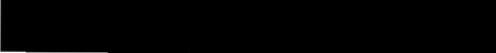
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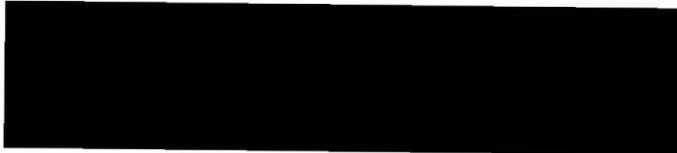


FILE: SRC 04 233 53663 Office: TEXAS SERVICE CENTER Date: **MAY 24 2006**

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. 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 an electrical contractor that seeks to employ the beneficiary as a manager and electrician supervisor. 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 is not a specialty occupation and the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, 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 (RFE); (3) the petitioner's response to the director's request; (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 is seeking the beneficiary's services as a manager and electrician supervisor. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 22, 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: managing the start-up of an electrical contracting company; supervising the activities of electricians engaged in the construction of electrical systems in residential and commercial buildings; planning wiring and installation of equipment and fixtures according to blueprints and schematic drawings; and inspecting all construction to ensure that it is performed to company standards and local building codes. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the job is most like a construction manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 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 appeal, counsel states that the *Handbook* indicates that the proffered position of a construction manager is an occupation in transition, with many employers increasingly preferring individuals with a bachelor's degree in construction science, construction management or civil engineering. Counsel also states that the position is more than a construction management position, since it involves managing a start-up company and encompasses the skills of a top-level manager who is responsible for the overall performance of the company. Counsel asserts that the position description evaluation previously provided establishes that a degree is required for the proffered position.

Upon review of the record, the petitioner has not established any 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 concurs with the director that the duties are those of a construction manager. A review of the construction manager job description confirms the accuracy of the director's assessment that no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for the position. Counsel's assertion that the occupation is in transition is not established. While the *Handbook* indicates

that “employers—particularly large construction firms—increasingly prefer individuals who combine industry work experience with a bachelor’s degree,” the petitioner has not established that this is an industry standard. Nor, for the purposes of the *Handbook’s* statement, has the petitioner established that it is comparable to a large construction firm.

The petitioner did not submit evidence regarding parallel positions in the petitioner’s industry. The record does not include any evidence from professional associations regarding an industry standard. The petitioner did submit a position evaluation from a business professor at the University of Maryland, which listed duties not included in the materials submitted to CIS as being the duties of the proffered position. The evaluator did not describe the materials that he reviewed in the process of his evaluation, but few of the duties he listed are those provided by the petitioner during the initial filing. The evaluator listed the following duties as being those of the proffered position: planning and coordinating electrical construction projects; acting as owner or manager of an electrical construction business; possessing a thorough knowledge of electrical construction methods, materials, and regulations; possessing familiarity with computers and software for job costing and estimating; performing as a people, job and time manager; coordinating several major activities in a fast-paced environment; establishing and maintaining good working relationships with owners, managers, designers, supervisors, and electricians; possessing a thorough understanding of building codes and standards and inspection procedures; planning sites and designs, value analysis, cost estimating and scheduling; performing contract administration, accounting, and business and financial management; determining labor requirements, supervising, hiring and dismissing of workers and overseeing performance of all electrical workers; and working with subordinate supervisors such as assistant managers, field engineers and crew supervisors. Since the evaluator based his evaluation on duties that are not part of the record, the evaluation carries little weight in these proceedings. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has, thus, 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. The proffered position is a new position, and therefore, the petitioner is not able to meet 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 to be so specialized and complex that they require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. While a construction manager may be proven to be of such complexity as to require a degree in a specialty, the petitioner did not establish how the specific duties of the proffered position relate to the petitioner's business. The director requested the petitioner to provide a more detailed description of the duties of the position. The director stated, “Is a bachelor’s degree a requirement in the industry? You should document parallel positions in the industry.” In response, the petitioner submitted the

above-referenced evaluation. As discussed previously, the duties the evaluator referenced in his decision are not in the record, except in the evaluation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 9 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The petitioner indicated in its letter of support that it wished to hire the beneficiary because he possessed experience and training in the electrical construction field. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in a construction-related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's experience and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary has a combination of education and experience that qualifies him for the position.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a construction-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In response to the director's request for evidence, the petitioner submitted an evaluation from a professor at the University of Maryland stating that the beneficiary's many years of progressively responsible work experience, combined with various training courses, are the equivalent of a bachelor's degree in construction management. However, since the evaluation is based upon the beneficiary's training and work experience, the evaluator must be an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Although the professor stated, “I have the authority to grant college level credit for experience, training and/or courses taken at other U.S. or international universities[,]” there is no corroborating evidence from the university provost or other such official documenting that statement.<sup>1</sup> The evaluator, therefore, has not established that he has the authority to grant credit for training or experience, or that the university has a program for granting such credit. Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>2</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the above-reference evaluation, and several employment letters. The documentation does not establish equivalence to a baccalaureate degree in a construction-related specialty.

The AAO now turns to the beneficiary’s prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described by the beneficiary’s

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<sup>1</sup>A review of the university’s website indicates that “life experience” may only be “validated through CLEP or University Maryland College Park departmental exam.” <http://www.umd.edu/catalog/0506/chapter1.pdf> (pages 9 and 10), and <http://www.tce.umd.edu/TCE/faq.html#ans14>, accessed May 18, 2006.

<sup>2</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

employer, his duties did not appear to involve the theoretical and practical application of a construction science. There is no specificity to the beneficiary's daily activities or his level of responsibility. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is construction management. Furthermore, the employer does not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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 appeal is dismissed. The petition is denied