



U.S. Citizenship
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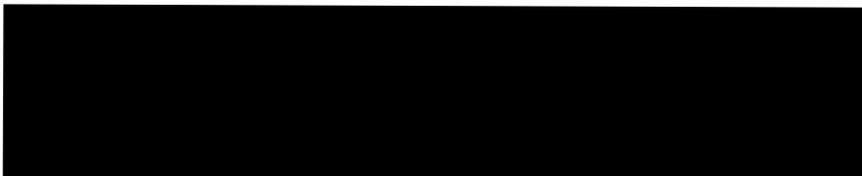
FILE: LIN 04 263 52181 Office: NEBRASKA SERVICE CENTER Date: OCT 05 2006

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 nonimmigrant visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner owns and manages two multiple-building apartment complexes, [REDACTED] in South Bend, Indiana. Within these two facilities are 1,500 residential units. It desires to employ the beneficiary temporarily in the United States as a property project manager (construction manager), at an annual salary of \$47,000, for three years. The acting director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation as enumerated in the regulations at 8 C.F.R. § 214.2(h)(4)(ii)(A) and denied the petition.

On appeal, counsel provides additional evidence to establish that the proffered position qualifies as a specialty occupation.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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-290B and supporting documentation; (2) the director’s denial letter; (3) the director’s request for additional evidence; (4) the petitioner’s response to the director’s request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as a property project manager (construction manager). In determining whether a position qualifies as a “specialty occupation” for purposes of the nonimmigrant H-1B visa, 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 baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act.

The Petition for a Nonimmigrant Worker (Form I-129) was filed on September 27, 2004. The petitioner states that the beneficiary will be responsible for planning, directing, coordinating and budgeting activities concerned with the construction and maintenance of the petitioner’s properties. The beneficiary will be coordinating the construction and renovations of the exterior and interior of two buildings, as well as the remodeling efforts.

In response to the director’s request for evidence, counsel explained that the beneficiary’s duties and responsibilities were as follows:

1. Overseeing the internal and external renovation process in both facilities to ensure that all contract conditions and requirements are met in accordance with the engineers’ and architects’ drawings and specifications, as well as prevailing building codes.

2. Developing the budget for the total exterior/interior renovation and remodeling projects.
3. Requesting and negotiating the acquisition of renovation funds from the lender.
4. Soliciting bids for maintenance contractors, construction projects and select contractors.
5. Dividing construction site activities/projects into logical steps and appropriate time frames (may require use of specialized computer applications). Coordinating directly with engineers, architects and contractors to assure that the time frame is clearly communicated to all parties.
6. Tracking and controlling costs while concurrently monitoring the project's budget to avoid cost overrun.
7. Overseeing the construction team of engineers, architects and contractors in the construction process. The beneficiary will be responsible for maintaining this team including hiring and firing responsibilities.
8. Conducting routine meetings with the construction team to present the current status of the renovation efforts, presenting the completed projects and the next step in the planned improvements. These presentations will include technical specifications, time and money for each project proposed.
9. Purchasing all materials, equipment and services needed for construction through various vendors. Communicating with the construction team on a routine basis to determine any additional needs encountered during construction.
10. Coordinating with the engineers to conduct engineering, environmental and appraisal reports throughout the construction process.
11. Reviewing the reports conducted by the engineering team to assure that the renovation efforts are meeting all the necessary requirements and using these reports for the refinancing process.

The beneficiary will also be responsible for budgeting and overseeing the replacement of 32 roofs, as well as negotiating and monitoring the cable network upgrading and integrating with Comcast. The other projects that the beneficiary will be overseeing are:

- The replacement of 15 dry wells.
- The replacement of damaged wood on the buildings.
- Painting all building exteriors.
- The reconstruction of damaged pre-cast concrete balconies.
- The construction of a children's playground

- The stripping, paving and re-stripping of the parking lots.

The director found that the proffered position is not a specialty occupation. The AAO disagrees, and finds that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (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*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference to determine whether the degree requirement is common in the industry in parallel positions among similar organizations and the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, at 1165-66.

With respect to the educational requirements of construction managers, the *Handbook*, 2006-07 edition, gives the following information:

For construction manager jobs, employers increasingly prefer to hire individuals with a bachelor's degree in construction science, construction management, or civil engineering, as well as industry work experience. . . .

The record establishes that the petitioner acquired two apartment communities with over 1,500 residential units that require major exterior and interior renovations. The renovation project is expected to cost over \$3 million. The petitioner has provided evidence of over \$45 million in available capital and 44 employees. The record also includes a copy of the petitioner's consolidated income statement from September 2004 until February 2005 which reveals a gross income of over \$5 million.

The petitioner has also provided an expert opinion from [REDACTED] who serves as a professor of construction management at California Polytechnic State University, San Luis Obispo, Ca. His opinion states that based on the duties, the proffered position requires the services of someone with at least a bachelor's degree in construction management, or a related field. Based on the evidence of record and the beneficiary's duties, the AAO determines that the beneficiary will be performing the services of a property project manager, in particular, a construction manager, in the proffered position.

The aforementioned responsibilities of the beneficiary call for an individual who is capable of conferring with personnel, inspecting work in progress and studying specifications to plan construction procedures. The duties include the development of architectural designs, overseeing the budget and controlling costs, reviewing

engineering reports and overseeing the internal and external renovations. To the extent that they are depicted in the record, and considering the weight of all the evidence, the duties appear to be specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.

Based on the foregoing information, the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record includes copies of the beneficiary's academic degree and transcript showing that he earned a Master of Science degree in construction management from Western Michigan University in Kalamazoo, Michigan. Therefore, the beneficiary is qualified to perform the duties of the specialty occupation.

The petitioner has established that the position is a specialty occupation and that the beneficiary is qualified to perform the services of the specialty occupation. Accordingly, the decision of the director shall be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

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