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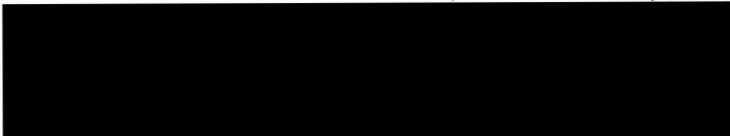
FILE: WAC 04 236 52958 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

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 a construction company and seeks to employ the beneficiary as an architect. 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an architect. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Review specifications for construction projects and compile drawings as to the placement of the structure’s concrete and form joints and other concrete work;
- Utilize computer automated drawing (CAD) and standard drafting materials in performing duties;
- Prepare project reports that include cost estimates relating to profit and loss, estimated time frame schedules for project completion and quality control, utilizing basic computer programs and standard drafting materials; and
- Coordinate with foremen at job sites in compiling information reflected in reports.

The petitioner requires a minimum of a bachelor’s degree in architecture for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position include duties normally performed by architectural drafters with some additional construction management responsibilities. The *Handbook* notes that drafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products such as toys, toasters, industrial machinery, and spacecraft to structures such as houses, office buildings, and oil and gas pipelines. Their drawings provide visual guidelines, show the technical details of products and structures, and specify dimensions, materials, and procedures. Drafters fill in technical details using drawings, rough sketches, specifications, codes, and calculations previously made by engineers, surveyors, architects, or scientists. For example, drafters use their knowledge of standardized building techniques to draw in the details of a structure, and use technical handbooks, tables, calculators and computers to complete their work. Architectural drafters draw architectural and structural features of buildings and other structures. They may specialize in a type of

structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber.

The duties detailed for the proffered position are not those of an architect as stated by the petitioner. Architects are licensed professionals trained in the art and science of building design. They transform building needs into concepts, and then develop the concepts into images and plans of buildings that can be constructed by others. Architects provide professional services to individuals and organizations planning a construction project. They may be involved in all phases of development, from the initial discussion with the client through the entire construction process. In this instance, the beneficiary will be producing shop drawings for construction projects which would then be submitted to the architect hired for the project. The architect would then review the beneficiary's shop drawings and make comments as required for construction.

The *Handbook* states that employers prefer applicants for drafter positions who have completed postsecondary school training in drafting, training that is offered by technical institutes, community colleges, and some 4 – year colleges and universities. A baccalaureate level education is not normally required for entry into the position.

In addition to the drafting duties to be performed by the beneficiary, he would also perform some construction management/administrative tasks. He would prepare project reports that include cost estimates relating to profit and loss, estimated time frame schedules for project completion, and quality control. These tasks are routinely performed in the industry by individuals with less than a baccalaureate level education. The *Handbook* notes that employers increasingly prefer to hire construction managers with a bachelor's degree in construction science, construction management, or civil engineering. Those educational preferences, however, are not presently an industry standard. The duties to be performed by the beneficiary for the petitioner are not as broad or complex as those of a construction or project manager, but would be performed in support of the project manager. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a bachelor's degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The duties of the proffered position are routinely performed in the industry by individuals with less than a baccalaureate level education. The record does not establish that the duties to be performed are so complex or unique that they can be performed only by an individual with a degree. Nor does the record establish that the duties of the position are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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