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U.S. Citizenship and Immigration Services

D2

[redacted]

FILE: SRC 05 219 51222 Office: TEXAS SERVICE CENTER Date: AUG 30 2007

IN RE: Petitioner: [redacted]
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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Texas 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 an independent marine survey company. It seeks to employ the beneficiary as a marine/cargo surveyor/port captain. The petitioner endeavors to employ the beneficiary in the nonimmigrant classification as a 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 on May 6, 2006, concluding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation, submitted on August 5, 2005; (2) the director's request for additional evidence (RFE), dated August 18, 2005; (3) counsel's response, dated November 3, 2005, to the director's request for evidence and supporting documentation; (4) the director's denial letter, dated May 6, 2006; and (5) the Form I-290B, dated June 2, 2006, and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's 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 (5th 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 marine/cargo surveyor/port captain. In a letter of support, dated July 21, 2005, the petitioner described the beneficiary's proposed duties as follows:

> In this capacity, he will survey cargo quantity loader/discharged from ships, barges etc; inspection/condition survey of cargo spaces; carry our pre-shipment surveys, and supervise loading and securing of steel products, project cargoes and heavy lifts, conduct On/Off hire bunker surveys, and provide consultancy work with ship owners, brokers, shippers on different aspect of charter parties, handling costs.

In response to the RFE, the petitioner reiterated the same list of duties, and stated that the duties as port captain involve guiding, recommending procedures and carrying out surveys with the captain and chief engineers on board ships. The director denied the petition on May 6, 2006, concluding that the proffered position is not a specialty occupation.

On appeal, counsel states the proffered position qualifies as a specialty occupation as it satisfies all four criteria pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the duties of the proposed position

are a combination of the duties performed by a marine surveyor, a cargo surveyor and a port captain. Counsel further contends that the director was erroneous in categorizing the proposed position as a water transportation occupation since the proposed position will not be at sea and the beneficiary will only work at the port. Counsel submits Internet job postings indicating that a degree requirement is common to the industry in parallel positions. Counsel also asserts that the *Dictionary of Occupational Titles (DOT)* designates the positions of Marine Surveyor and Marine Cargo Inspector, positions that are similar to the proposed position, with a Standard Vocational Preparation (SVP) of 8, which qualifies the position for classification as a 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 AAO find that the proffered position is not a specialty occupation.

The petitioner states that the duties of the position are most similar to those of a Marine Surveyor and a Marine Cargo Inspector, under the Department of Labor's *Occupational Information Network (O*NET)*. The duties of the position as listed by the petitioner, however, are not those of either of these occupations in the *O*NET*. The primary duties of a marine surveyor in the *O*NET* are to inspect, test, design and analyze marine equipment and machinery in order to repair or develop such equipment and machinery, not to prepare it for transport. The duties of a marine cargo inspector in the *O*NET* include the calculation of tonnage, hold capacities, and ship stability factors; examining blueprints and taking physical measurements to determine capacity and depth of vessel in water; writing certificates of measurement; and issuing certificates of compliance. None of these duties are described in the petitioner's description of the position.

The petitioner also states that the position includes the duties of a port captain, and submits three job descriptions for port captain. One of them includes duties such as: evaluating, identifying and recommending modifications and improvement in deck equipment; managing costs and requisitions for dockside activities; coordinating and controlling ship berthing. The other job description for port captain includes duties such as: attending vessels for cargo expedition, ship inspections, safety audits; conduct incident investigations; review cargo orders/load plans to verify correct storage, quantities, stress and different restrictions; provide technical information on reading vessel characteristics and cargo loading capacities. The third describes duties such as managing day-to-day operations including vessel movements and personnel. The duties that the petitioner describes as port captain duties in the position include "guiding, recommending procedures and carrying out surveys with the captain and chief engineers on board ships." There is no indication in the petitioner's description of duties that the beneficiary will be performing the duties of port captain as described in any of the job descriptions, or that the performance of such duties requires the equivalent of a baccalaureate degree in marine transportation.

In determining whether a proposed position qualifies as a specialty occupation, 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 AAO routinely consults the

Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The AAO acknowledges that the *Handbook* does not list occupations in marine surveying, cargo surveying, or port captain. Nevertheless, the petitioner's description of the duties of the positions do not encompass the duties of the two occupations in the DOL *O*NET*, or as described in industry job openings. In reviewing the 2006-2007 edition of the *Handbook*, the AAO finds that the duties and responsibilities of the proposed position, while generally described, are encompassed within the *Handbook's* entry for three occupational groupings as discussed below.

A review of the duties of the proposed position finds them closely aligned to the responsibilities of three occupational groupings discussed in the *Handbook:* (1) cargo and freight agents; (2) transportation and material moving occupations; and (3) management, scientific, and technical consultants.

In its discussion of the duties of cargo and freight agents, the 2006-2007 edition of the *Handbook* states the following:

> Cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite shipments by determining the route that shipments are to take and by preparing all necessary shipping documents. The agents take orders from customers and arrange for the pickup of freight or cargo for delivery to loading platforms. Cargo and freight agents may keep records of the cargo, such as its amount, type, weight, and dimensions. They keep a tally of missing items, record the condition of damaged items, and document any excess supplies.
>
> Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight, they verify that the proper customs paperwork is in order. Cargo and freight agents often track shipments electronically, using bar codes, and answer customers' inquiries on the status of their shipments.

The AAO next turns to the *Handbook's* discussion of the duties of transportation and material moving occupations:

> Inspect equipment or goods in connection with the safe transport of cargo or people. Includes rail transport inspectors, such as freight inspectors, car inspectors, rail inspectors, and other nonprecision inspectors of other types of transportation vehicles.

Finally, the *Handbook's* discussion on management, scientific, and technical consulting services stated the following:

> Management, scientific, and technical consulting firms influence how businesses, governments, and institutions make decisions. Often working behind the scenes, these

> firms offer resources that clients cannot provide themselves. Usually, one of the resources is expertise—in the form of knowledge, experience, special skills, or creativity; another resource is time or personnel that the client cannot spare. Clients include large and small companies in the private sector; Federal, State, and local government agencies; institutions, such as hospitals, universities, unions, and nonprofit organizations; and foreign governments or businesses.
>
> The management, scientific, and technical consulting services industry is diverse. Almost anyone with expertise in a given area can enter consulting. Management consulting firms advise on almost every aspect of corporate operations, including marketing; finance; corporate strategy and organization; manufacturing processes; information systems and data processing; electronic commerce (e-commerce) or business; and human resources, benefits, and compensation. Scientific and technical consulting firms provide technical advice relating to almost all nonmanagement organizational activities, including compliance with environmental and workplace safety and health regulations, the application of technology, and knowledge of sciences such as biology, chemistry, and physics.

Therefore, based upon its reading of the *Handbook*, the AAO concludes that the duties of the proposed position, as described by the petitioner in its letter of support and in its response to the director's request for additional evidence, combines the duties of these three occupational groupings, described in the *Handbook*: (1) cargo and freight agents; (2) transportation and material moving occupations; and, (3) management, scientific and technical consulting services. The majority of the duties proposed for the beneficiary are encompassed within these three groupings. Having made such a determination, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent, in a specific field.

The *Handbook* states the following regarding the educational requirements for cargo and freight agents:

> Many jobs are entry level and do not require more than a high school diploma. Employers, however, prefer to hire those familiar with computers. Typing, filing, recordkeeping, and other clerical skills also are important.

For transportation inspectors, the requirements as discussed by the *Handbook* are as follows:

> Most significant source of postsecondary education or training: Work experience in a related occupation.

The *Handbook* offers the following information regarding the educational qualifications of management, scientific, and technical consulting services:

> Training and advancement opportunities vary widely within management, scientific, and technical consulting services, but most jobs in the industry are similar in three respects.

> First, clients usually hire consulting firms on the basis of the expertise of their staffs, so proper training of employees is vital to the success of firms. Second, although employers generally prefer a bachelor's or higher degree, most jobs also require extensive on-the-job training or related experience. Third, advancement opportunities are best for workers with the highest levels of education. . . .
>
> The method and extent of training can vary with the type of consulting involved and the nature of the firm. Some college students might have an advantage over other candidates if they complete an internship with a consulting firm during their studies. Other workers with related experience are hired as consultants later in their careers. For example, former military or law enforcement workers often work for security consulting firms. Similarly, some government workers with experience in enforcing regulations might join an environmental or safety consulting firm. Consultants in scientific fields often have a master's or doctoral degree, and some previously have taught at colleges and universities.

These descriptions do not support a finding that a bachelor's degree is normally required for entry into this occupation. The fact that most employers generally "prefer a bachelor's or higher degree," for a position in management consulting services, is not synonymous with a finding that a bachelor's degree in a specific specialty is a minimum requirement for entry into this occupation. In addition, the *Handbook* finds that the training for management consulting can very with the type of consulting and thus a bachelor's degree in a specific specialty is not a minimum requirement for entry into this occupation. While some maritime transportation consulting firms may require a minimum of a baccalaureate degree in a specialty, the record does not contain sufficient information about the petitioner or the position to allow the AAO to conclude that a specific degree is required to perform the duties. 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)).

The *Handbook* also reports that cargo and freight agents do not require more than a high school diploma, and that transportation inspectors require work experience in a related field and the most significant source of training is postsecondary education. It is clear that a bachelor's degree, or its equivalent, is not the normal minimum requirement to fill any of the three occupational groupings.

Finally, counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. 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. An SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require. Further, as noted above, the petitioner has not established that the duties of the position are similar to the occupations described in the *O*NET*. Accordingly, the AAO accords no weight to this information.

For all of these reasons, the AAO finds that the position does not qualify as a specialty occupation on the basis of a degree requirement under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the two job postings submitted by counsel on appeal for the position of port captain. However, counsel has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in positions that are parallel to the proffered position and found in organizations similar to the petitioner.

There is no information in the record to establish that the companies advertising their vacancies in the submitted job postings are similar in size, scope, or scale of operations, business efforts, or expenditures to the petitioner. Simply 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. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *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). The AAO has no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner.

Moreover, the job description for the proposed position provides too little information regarding the duties of the position that would allow the AAO to undertake a meaningful analysis as to whether the advertised positions are in fact "parallel" to the position proposed here. As noted above, the duties listed on one advertisement mainly consist of evaluating, monitoring and recommending improvements to deck equipment, which is not part of the job duties for the proffered position. The petitioner also submitted a third job posting with its response to the director's request for evidence, which was for a position that was responsible for managing the vessel operations. Again, the proposed position will not manage the ship but instead will survey the cargo. The fact that the positions may share one or two similar duties with the petitioner's proposed position does not establish that they are in fact parallel positions. Finally, the AAO notes that three postings are too few to establish an industry-wide standard.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a degree. There has been no demonstration that the proposed position is more complex or unique than the general range of duties performed by cargo and freight agents; transportation and material moving occupations; and management, scientific, and technical consultant positions. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of duties in such positions.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally 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 its response to the director's request for evidence, the petitioner submitted a letter dated October 27, 2005, and asserted that "everyone our company has ever employed in the position of Port Captain has had either a Bachelor's degree or a captain's license, which is the equivalent of a bachelor's degree." However, the petitioner did not submit supporting evidence to corroborate this claim. Again, 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. at 165.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 (5th Cir. 2000). The critical element is not the title of the position or 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. To interpret the regulations in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The position as described in the current record does not establish that the petitioner normally requires a baccalaureate degree in a specialty, or that such degree is required.

Accordingly, the petitioner has not established the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel points to the DOT's discussion of "marine cargo inspector" and "marine engineer" as proof that the duties of the proffered position meet the specialized and complex threshold established by the fourth criterion. The AAO disagrees. [1]

The AAO refers to the *Handbook* excerpts quoted previously in this decision, which state that a bachelor's degree in a specific specialty is not the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear more specialized and complex than those of the corresponding positions as set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in his role as a marine/cargo surveyor/port captain for the petitioner would face duties or challenges any more specialized and complex than those outlined in the *Handbook* for cargo and freight agents, transportation and material moving occupations, and management, scientific and technical consultants in maritime transportation. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. The petitioner submitted an educational credentials evaluation indicating that the beneficiary's certificate of competency as a master of a foreign going ship is equivalent to a Bachelor of Science in marine transportation awarded by a regionally accredited university or maritime academy in the U.S. A credentials evaluation service may evaluate academic credentials only. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). The record does not establish that the beneficiary received his training in an academic setting. For this additional reason, the petition may not be approved.

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*), (*2*), (*3*), and (*4*). Further, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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.

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[1] The AAO also refers to its previous discussion regarding the inapplicability of the *DOT's* SVP assessment to a determination of whether a particular position qualifies for classification as a specialty occupation, and the petitioner's failure to describe the duties with sufficient specificity to allow CIS to conclude that the position may nevertheless require a degree in a specific field.