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20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 05 267 52975 Office: NEBRASKA SERVICE CENTER

Date: **SEP 07 2007**

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:



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.

James Blinzinga, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a general contractor and construction management business that seeks to employ the beneficiary as a construction manager. The petitioner, therefore, 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) former counsel and the petitioner's responses 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 reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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:

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) consistently 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 seeks the beneficiary's services as a construction manager. Evidence of the beneficiary's duties includes: the petitioner's September 12, 2005 letter in support of the petition, and former counsel and the petitioner's responses, dated January 10, 2006 and January 6, 2006, respectively, to the director's RFE. As stated by the petitioner in its September 12, 2005 letter, the proposed duties are as follows:

Budgeting, scheduling, document control, material and resource planning, and quality standards.

In response to the director's RFE, the petitioner further described the day-to-day proposed duties and the relevant coursework taken during the pursuit of the necessary baccalaureate degree as follows:

- **Writing scopes of work and requests for information (RFIs) (20-25%)**
Coursework: Engineering Graphics, Building Construction, and Environmental Engineering;
- **Field visits and preparing status reports as necessary (5-10%)**
Coursework: Project Management, Computer Applications, and Management Information Systems (MIS);

- **Review shop drawings to check for compliance with project plans and specifications before submittal for approval (30%)**
Coursework: Engineering Graphics, Concrete Technology, Testing of Materials, Water Supply and Sanitary Engineering, Properties of Materials, and Applied Physics and Chemistry;
- **Coordinate project meetings, prepare meeting minutes (5%)**
Coursework: Project Management and Computer Applications;
- **Prepare and track field change orders (10%)**
Coursework: Engineering Economics, MIS, and Computer Applications;
- **Correspondence with agencies, utilities, architect, owner, subcontractors (5%)**
Coursework: Project Management and MIS;
- **Review estimates and payment applications (5-10%)**
Coursework: Project Management, Engineering Economics, and Computer Applications;
- **Preparing project schedules, keeping track of progress of work using Primavera. Review budget, and track and update project costs (10%)**
Coursework: Project Management, Engineering Economics, and Computer Applications; and
- **Other duties as needed or assigned.**

The director found that the proposed construction manager duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *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 concluded 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, in part, that the duties of a construction manager entail complex tasks that require an in-depth knowledge of the construction process that can be successfully completed only by a person with a bachelor's degree in a related field. Counsel also states that the petitioner does not hire any construction managers without a bachelor's degree or higher in a field related to construction administration, construction management, civil engineering, construction engineering, or architectural design.

In this case, the proffered position is that of a construction manager for the petitioning entity, which is a general contractor and construction management business that was established in 1980, and has 100 employees and a gross annual income of \$95,000,000. A review of the DOL's *Handbook*, 2006-07 edition, finds that 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, for construction manager

jobs. In this case, the beneficiary holds a foreign bachelor's degree in civil engineering and a U.S. master's degree in civil engineering.

The AAO notes that not all construction manager positions, or positions that employers designate as construction manager positions, require a bachelor's degree, or the equivalent, in construction science, construction management, civil engineering, or a related field. In the context of the record of this particular proceeding, however, the cumulative weight of the details that the petitioner presented about the proposed duties and the size and scope of its business operations are decisive. It is sufficient to establish that the nature of the duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of at least a U.S. bachelor's degree, or the equivalent, in civil engineering or a related specialty. Therefore, the petitioner has satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The appeal will be sustained, and the petition will be approved.

As the evidence of record also establishes that the beneficiary holds the equivalent of a U.S. master's degree in civil engineering, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained, and the petition is approved.