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U.S. Citizenship
and Immigration
Services

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SEP 26 2007

FILE: WAC 05 226 52929 Office: CALIFORNIA SERVICE CENTER Date:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 contracting company. It seeks to employ the beneficiary as a project engineer and 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 position did not qualify as a specialty occupation. On appeal, counsel asserts that the proffered position qualifies as a specialty occupation and that similarly situated employees of the petitioner have bachelor's degrees.

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 Notice Of Intent To Deny (NOID); (3) the petitioner's response to the director's NOID; (4) the director's request for additional evidence; (5) the petitioner's response to the director's request; (6) the director's denial letter; and (7) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a project engineer. Evidence of the beneficiary's duties was set forth in the record of proceeding. According to this evidence the beneficiary would:

- Plan projects and schedule engineering projects;
- Document and log pre-project preparation and ongoing project status;
- Conduct design, estimation and code review;
- Test electrical installations; and
- Plan and coordinate activities to improve operating efficiency.

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

The AAO routinely consults the 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, though generally described, are essentially those noted for construction managers. The *Handbook* notes that construction managers plan and coordinate construction projects. Such managers are known by many titles, including: constructors; construction superintendents; general superintendents; project engineers; project managers; general construction managers; or executive construction managers. These individuals manage, coordinate, and supervise the construction process from the conceptual development stage through final construction on a timely and economical basis. Given designs for a particular project, they oversee the organization, scheduling, and implementation of the project to execute those designs. They are responsible for coordinating and managing people, materials, and equipment; budgets, schedules, and contracts; and safety of employees and the general public. Construction managers oversee the completion of all construction in accordance with the engineer's and architect's specifications and prevailing building codes. They evaluate and determine appropriate construction methods and cost effective plans and schedules. This

may require sophisticated estimating and scheduling techniques and the use of computers with specialized software. They regularly prepare progress reports and meet with owners, other constructors, trade contractors, vendors, architects, engineers, and others to monitor and coordinate all phases of a construction project. On small projects such as remodeling a home, a self-employed construction manager or skilled trades worker who directs and oversees employees often is referred to as the construction contractor. In this instance, the beneficiary would work as a project engineer on various electrical contracting projects. The duties to be performed by the beneficiary fall within the wide range of duties performed in the industry by construction managers. The *Handbook* notes that even though degrees are increasingly preferred in the industry, a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has not, therefore, satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations and in support of that assertion submits copies of five job advertisements. Further, some of the advertising employers require a bachelor's degree for construction management or project engineering positions, but some do not. Five advertisements are not sufficient in scope to establish an industry standard for the educational requirements of the proffered position. This is especially true given the statements in the *Handbook* concerning the educational requirements for the position. In his sworn statement of May 16, 2006, Ed Mahnert (the petitioner's superintendent in Arizona) states that the petitioner requires a bachelor's degree for the offered position, or equivalent experience. [REDACTED] then states, however, that of the 12 project engineers employed by the petitioner, 10 have degrees in a related field, and the remainder have at least 8 years of experience. By regulation, eight years of work experience is not equivalent to a baccalaureate level education. [REDACTED]. The petitioner has failed to establish the referenced regulatory criterion at [REDACTED].

The petitioner asserts that it normally requires a degree or its equivalent for the proffered position. In support of that assertion the petitioner provided information about five of its project engineers. The petitioner states that four of these individuals hold bachelor's degrees. One, however, holds only an associate's degree. The petitioner did not provide copies of employee diplomas or other documentation from their respective universities confirming the degrees earned. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 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 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 petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As generally described by the petitioner, the duties of the proffered position appear to be routine for project engineers in the industry. While the petitioner indicates that it employs 6000 persons and has a gross annual income of \$450,000,000, no corroborative evidence of record describing the number of projects, the size of the crews, the complexity of the projects, or the like establishes that the duties of the proposed position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Simply going on the 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 190 (Reg. Comm. 1972)). Nor, as described by the petitioner, are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not contain any information establishing that the duties of the position are more unique, specialized or complex than duties performed in the industry by individuals holding less than a baccalaureate level education. The petitioner has not satisfied the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 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.