

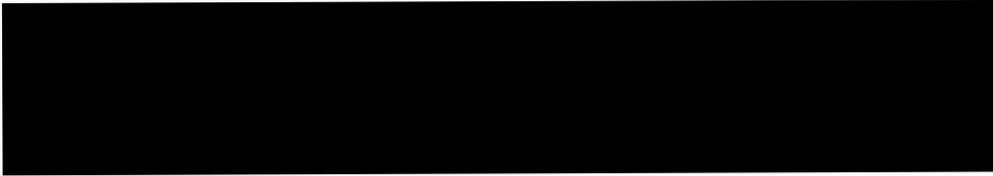
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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 06 107 52452 Office: VERMONT SERVICE CENTER Date: JUN 02 2008

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 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 dismissed. The petition will be denied.

The petitioner is a commercial and retail construction company<sup>1</sup> that seeks to employ the beneficiary as a business and information systems analyst. 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) counsel and the petitioner's responses to the RFE; (4) the director's denial letter; and (5) the Form I-290B, documentation in support of the appeal, and a written statement from the petitioner. 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.

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<sup>1</sup> The website for the Commonwealth of Virginia's "Virginia State Corporation Commission" at <http://s0302.vita.virginia.gov/servlet/resqportal/resqportal> reports that the petitioner is not in good standing. In view of the foregoing, it is not clear that the petitioner is an active company.

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 (5<sup>th</sup> Cir. 2000).

The petitioner seeks the beneficiary’s services as a business and information systems analyst. Evidence of the beneficiary’s duties includes: the petitioner’s February 20, 2006 letter in support of the petition and the petitioner’s June 8, 2006 response to the RFE. As stated by the petitioner, the proposed duties and time allocations, which total only 90%, are as follows:

**Management & Administration: 20%**

1. Assist management in creating short- and long-term organizational objectives/goals in line with the petitioner’s vision by providing research and analysis of industry, market, and economic trends and changes.
2. Provide management with a choice of effective strategies and methods of implementation towards achieving the petitioner’s objectives.

3. Assist in restructuring the petitioner for efficiency and productivity in the areas of operations, accounting, human resources, and information systems.
4. Aid management in creating departments and adding new professional job positions that will contribute to the petitioner's productivity.

**Information Systems: 30%**

1. Align the organizational and operational needs, and research and identify appropriate information systems solutions.
2. Perform systems analysis and design.
3. Research innovative and proven technologies and seek their ability to match the organizational standards, requirements, extent of automation, and ROI, and report findings to management.
4. Implement application, intranet, internet, and networking to fit the existing 3-employee office and to allow for future growth.
5. Perform network administration, application administration, and web administration.

**Research and Analysis: 30%**

1. Perform data collection, data entry, and statistical analysis of data pertaining to the industry, market, customers, vendors, and technology in order to enhance the petitioner's decision-making processes.
2. Assist the petitioner in applying appropriate industry standard cost-control methodologies and resource allocations.
3. Analyze accounting, financial, and project management data to locate discrepancies and provide control over the petitioner's performance.

**Training: 10%**

1. Educate management in information systems and new management trends.
2. Educate the staff/users in the implemented information systems.
3. Arrange and provide computer-related training sessions.

The director found that the petitioner had not established that a specialty position is available for the beneficiary. The director also found that the petitioner's lease and work contracts were signed after the filing of the petition. 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, the petitioner states, in part, that the petitioner was registered in 2004 as a Class A General Contractor for commercial projects, started doing business in 2005, and is a successor company of Tidewater Improvements, Inc., which was established in 2000. The petitioner also asserts that the beneficiary has performed H-1B level work since the filing of the petition. As supporting documentation, the petitioner submits: contracts dated prior and subsequent to the filing of the petition; invoices, payments, and releases for the petitioner's projects; bank statements; tax documents; pay stubs for the beneficiary; a purchase confirmation; a qualification notice; and a performance bond.

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 proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is that of a business/management analyst, which in private industry generally requires a master's degree in business administration or a related discipline. *See the Handbook*, 2006-07 edition. In the context of the petitioner's business, a stated commercial and retail construction company with 14 employees and a gross annual income of \$1.5 million, the AAO finds that the management-related job duties are primarily those of an administrative services manager, who, in small organizations, may oversee all support services. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for administrative services manager positions. Further, in small organizations, experience may be the only requirement needed to enter a position as office manager. *See the Handbook*, 2006-07 edition. The AAO also does not find that the proposed duties related to an information systems analyst position qualify the proffered position is a specialty occupation. A review of the training requirements for Computer Systems Analysts in the *Handbook*, 2006-07 edition, finds that there is no universally accepted way to prepare for a job as a systems analyst, though most employers place a premium on some formal college education. The *Handbook* does not report that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a computer systems analyst job. The *Handbook*

does not indicate that a baccalaureate or higher degree, or its equivalent, is required for a business and information systems analyst of the nature described in the instant petition.

The AAO acknowledges the May 25, 2007 letter from the petitioner's CPA, who opines that the beneficiary has provided "much needed business analysis necessary to find ways to control costs and improve profits." Also noted is the May 24, 2004 letter from Hampton Roads Bonding, whose representative states that the beneficiary was instrumental in the petitioner's procurement of the petitioner's first performance and payment bond. The petitioner, however, has not provided a definitive statement of duties associated with the proposed position that substantiates that the incumbent in the position must possess a bachelor's degree in a specific discipline. For example, the petitioner has not provided documentary evidence substantiating the beneficiary's tasks that were involved in controlling the petitioner's costs and improving profits. The record does not contain documentary evidence such as reports, correspondence, analysis, or other similar evidence detailing the actual daily duties involved in controlling costs and profits. It is the description of the actual daily duties in relation to the petitioner's specific business operations that enables the AAO to analyze whether the tasks involved comprise duties that include the theoretical and practical application of specialized knowledge that requires the attainment of a bachelor's or higher degree in a specific discipline. Similarly, the petitioner does not describe the beneficiary's duties in obtaining a performance bond. Although the petitioner alludes to the beneficiary's task of providing the due diligence necessary to obtain a performance bond, the AAO is unable to determine whether the due diligence included tasks that required a bachelor's level education in a specific discipline or whether the tasks consisted of gathering and providing records for review, tasks that might require experience but not a bachelor's level education in a specific discipline. The record does not include the documentary evidence or detail necessary to establish that the proffered position is a specialty occupation. 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)).

Of further note, although information on the petition reflects that the petitioner was established in 2000, has 14 employees and a gross annual income of \$1.5 million, the petitioner's 2005 federal income tax return reflects \$617,837 in gross receipts or sales, \$10,385 paid in compensation of officers, and no salaries or wages paid. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The record contains no evidence regarding parallel positions in the petitioner's industry or from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as an administrative services manager/systems analyst. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with a degree in a

specific specialty. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. To establish this criterion the AAO usually 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. The record in this matter does not contain evidence that the petitioner previously employed personnel in this position. In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. 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 a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The petitioner states, on appeal, that the beneficiary has performed H-1B level work since the filing of the petition. The petitioner, however, has not established that the duties performed exceed in scope, specialization, or complexity those usually performed by administrative services managers/systems analysts, occupational categories that do not normally require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner's unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion.

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.

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