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U.S. Citizenship and Immigration Services

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FEB 18 2005

FILE: WAC 02 190 54730 Office: CALIFORNIA SERVICE CENTER Date:

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, Director
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 structural steel designer that seeks to employ the beneficiary as an estimator. 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. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

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 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) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an estimator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail estimating all project costs; reviewing blueprints to determine specifications for machining operations, materials needed, budgetary aspects, human/work evaluatory programs, and programming work schedules and job assignments; implementing cost-control measures; and supervising and controlling project installations as they relate to standard governmental electrical control codes. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in architecture, engineering, mathematics, construction, or a related field. The petitioner's March 22, 2003 letter elaborated on the duties of the proffered position, describing the beneficiary as participating in negotiations for professional services and fees; coordinating with outside contractors to perform specific projects; consulting and advising on site evaluations, feasibility studies, and budgetary consultations; and preparing requests for proposals.

The director determined that the proffered position was not a specialty occupation. According to the director, the submitted evidence of job announcements was not persuasive in establishing that the proffered position is a specialty occupation. Referring to the description of a cost estimator in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that although many firms prefer or desire a baccalaureate degree, the *Handbook* reveals that a degree is not a normal industry-wide requirement for entry into the occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel refers to a letter from Dr. Zuhair Itr to demonstrate that the proffered position is a specialty occupation, and contends that a recent announcement in the *Federal Register* indicates that bachelor's degree holders must fill estimator positions. Counsel cites to 20 C.F.R. § 656.21(b)(2)(iv) to claim that an employer preference shall be deemed a job requirement for the purposes of the section.

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 first considers 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 *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

Te *Handbook* discloses that the duties of the proffered position are performed by a cost estimator, and that the director properly determined that the *Handbook* relays that this occupation does not require a bachelor's degree in a specific specialty.

The opinion letters from [redacted] associate professor in the construction department at Southern Polytechnic State University in Marietta, Georgia, a [redacted] chief architect for Pacific Engineers and Constructors, Ltd., assert that a baccalaureate degree in a specific specialty is required for a cost estimator. However, I [redacted] offer no corroborating evidence to substantiate their assertions. 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 Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The submitted document entitled "Education and Training Categories by O*NET-SOC Occupation" is not persuasive in establishing that the proffered position is a specialty occupation. The DOL has replaced the *Dictionary of Occupational Titles* (*DOT*) with the *Occupational Information Network* (*O*NET*). Both the *DOT* and *O*NET* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of the document "Education and Training Categories by O*NET-SOC Occupation" in the Federal Register.

Counsel's reference to 20 C.F.R. § 656.21(b)(2)(iv) is not persuasive in establishing that the proffered position is a specialty occupation. The regulation at 20 C.F.R. § 656.21(b)(2)(iv) relates to labor certification applications. Thus, it does not apply in determining whether a particular position qualifies as a specialty occupation under the Act and the regulations set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Based on the above discussion, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, cost estimator.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to job postings. However, for various reasons, this evidence is not persuasive in establishing 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). The Commonwealth of

Pennsylvania is a public entity; therefore, it differs in nature from the petitioner, a structural steel designer. Further, the Commonwealth of Pennsylvania does not require a bachelor's degree for its position. The postings from Management Recruiters International, AppleOne, and the recruiter for the senior estimator in Orange County, California, do not describe the nature of the hiring companies; thus, the AAO cannot determine whether they are similar in nature to the petitioner. The duties of StructureCase's job differ from the proffered position: it involves preparing engineering design and documents, and negotiating design and construction issues. Unit Construction prefers, but does not require, a baccalaureate degree. The posting from Kvaener Inc. is truncated; thus, the AAO cannot determine the duties of the job or its educational requirements. For the stated reasons, the job postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* conveys that cost estimators do not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Again, because the *Handbook* conveys that cost estimators do not require a bachelor's degree in a specific specialty, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(*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.

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