**U.S. Department of Homeland Security**
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

JAN 28 2005

FILE: WAC 03 097 54022 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 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 a construction company and seeks to employ the beneficiary as a cost engineer (electrical). The petitioner 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief and asserts that the offered position qualifies as a specialty occupation.

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)(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.

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 requests for additional evidence; (3) the petitioner's response to the director's requests; (4) the director's denial letter; and (5) 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 cost engineer (electrical). Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: calculate costs associated with construction and implementation of the electrical aspects of construction projects; prepare project cost summaries, time phase charts and cost reduction curves; provide cost support, establishing cost control procedures, and apply cost control applications to monitor baseline costs and forecast project costs; identify, control, and forecast the cost to complete projects; analyze factors affecting construction activities such as the cost of raw materials, inventory, manpower, environmental and project cite factors, and construction schedules; perform feasibility studies and life cycle costing; determine cost of necessary commodities; negotiate terms and conditions of purchase for needed commodities; review and resolve supplier issues; coordinate the flow of information to ensure that projects are effectively managed; monitor and report on project performance using earned value analysis; design and develop project presentations and proposals; manage contracts with customers and suppliers; maintain a database to identify and verify estimating norms, trends, earned value, and performance; respond to customer inquiries on cost performance; act as liaison between contractors and subcontractors; and detail electrical engineering designs, reports, blueprints, and other data. The petitioner requires a minimum of a bachelor's degree in engineering for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for cost estimators as set forth in the *Handbook*. These individuals essentially develop the cost information that business owners or managers need to make a bid for a contract or to determine if a proposed product will be profitable. Regardless of the industry in which they work, estimators compile and analyze data on all of the factors that can influence costs, such as materials, labor, location, and special machinery requirements. The *Handbook* notes that job entry requirements for cost estimators vary by industry, but that in the construction industry employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. While these degrees are being increasingly preferred, however, the *Handbook* does not indicate that a baccalaureate degree is presently the normal minimum requirement for entry into the position offered. Further, the petitioner's assertion that the Department of Labor's Employment and Training Administration's wage library zone four classification establishes that a degree is normally required for the proffered position is not persuasive. The zone classification system does not indicate that a degree in any particular specialty is required for the position of a cost estimator. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

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 seven job advertisements. The submitted advertisements do not, however, establish this assertion. Three of the advertisements indicate that a bachelor's degree is required for the advertised position, but do not state the degree need be in any particular discipline. One indicates that an engineering or construction degree is preferred, but not required. Two state that a bachelor's degree in construction, engineering, or business is required, **or** related experience. (Emphasis added.) The advertisements do not state that the amount of experience required must be the equivalent of a baccalaureate level education. Only one advertisement states that a degree in engineering or a construction related field is required. The submitted advertisements are consistent with the statements contained in the *Handbook* indicating a preference for degreed individuals. They do not establish, however, that a degree in a specific specialty is commonly required in the industry for parallel positions among similar organizations. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the duties of the proffered position appear to be routine for construction cost estimators. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are routinely performed in the industry by individuals with less than a baccalaureate level education. The petitioner has failed to established the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*2*) or (*4*).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.