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U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 266 51393 Office: CALIFORNIA SERVICE CENTER Date: **MAR 19 2008**

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:

SELF-REPRESENTED

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 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. It seeks to employ the beneficiary as a project manager/civil engineer and endeavors to classify him 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, the petitioner asserts that the proffered 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)(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 request for additional evidence (RFE); (3) the petitioner’s response to the director’s RFE; (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 project manager/civil engineer. Evidence of the beneficiary’s duties was set forth in the record of proceeding. According to this evidence the beneficiary would:

- Manage and supervise construction work as well as give technical support and supervision of subordinate construction personnel;
- Perform engineering duties in planning, designing, and overseeing construction and maintenance of building structures and facilities;
- Manage different aspects of construction and direct construction supervisors and workers;
- Manage and control construction projects as well as the progress and logistics of projects;
- Plan, budget and direct construction projects including scheduling and work flow;
- Determine proper construction techniques as well as scheduling construction operations into logical and detailed steps;
- Allot time to each step in the construction project so that deadlines are met;
- Manage labor related issues, including supervising the hiring and firing of employees;
- Instruct construction supervisors and track the progress of construction operations such as the arrival and utilization materials, supplies, tools, machinery, equipment and vehicles;
- Secure needed permits and licenses for projects as well as ensure that complexes are built to meet safety codes and regulations;

- Review engineering and architectural drawings and specifications and consult with design professionals to ensure that progress is made as outlined in plans and specifications;
- Collaborate with cost estimators to ensure that expenses are properly recorded and monitor project costs; and
- Meet with owners, design professionals and other contractors to orchestrate the progress and completion of projects.

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 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 manager/construction manager on various 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 does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific educational discipline for entry into the proffered position, and offers no evidence in this regard. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

As described by the petitioner, the duties of the proffered position appear to be routine for construction managers in the industry. The petitioner has submitted no evidence to establish that the duties of the position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor, as described by the petitioner, are the duties 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 petitioner describes its business as one established for the purpose of building construction, remodeling and maintenance (painting and wall covering) services. It does not engage in engineering or architectural services which would require specialized skills normally associated with a baccalaureate level education. All of the duties detailed by the petitioner are routinely performed by construction managers with less than a baccalaureate level education in the petitioner's business environment. The petitioner notes that the job zone and SVP rating assigned to construction management positions by the Department of Labor establishes that the offered position is a specialty occupation. The AAO does not agree. The *O*NET* reference to which the petitioner refers merely indicates that most, but not all, positions in that particular *O*NET* job classification require a four-year bachelor's degree. The classification does not state, however, that the degree for any particular position need be in any particular specialty, and cannot be used for the purpose of establishing H-1B classification. Further, neither the *Dictionary of Occupational Titles (DOT's)* SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require. 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.