

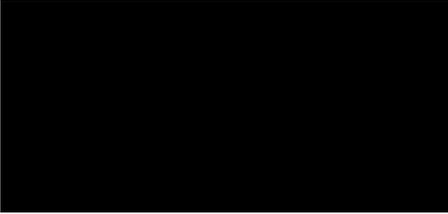
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U.S. Citizenship
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Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: APR 06 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is supplier of goods and services to federal government agencies. It seeks to employ the beneficiary as a professional services bidding analyst and to classify her 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 found that the proffered position is a specialty occupation, but denied the petition on the ground that the beneficiary is not qualified to perform the services of the subject position because she lacked the specific educational degree required by the 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision;

and (5) Form I-290B and counsel's appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a professional services bidding analyst. In a letter accompanying Form I-129 the petitioner described the duties of the position, and the percentage of the beneficiary's time required by each, as follows:

- Determine the orders or requirements for professional services from the weekly publications of CB Disk, which publishes all the orders from federal agencies. Participate in the formulation, development and recommendation to management of a system or program by which procurement requests, including requests for quotes, bids and proposals are coordinated and reviewed. This duty also includes receiving and evaluating applications, quotations and bids for required services from the job market. (15%)
- Research, analyze, study and be familiar with the required services needed to be procured by the petitioner through reading books, the Thomas Register, journals, brochures, publications, and attendance in trade fairs and seminars sponsored by job placement agencies. The analysis and research should pay attention to cost, quality, quantity, and the reputation of the job providers as well as the qualifications of the applicants. (10%)
- Conduct test and evaluation of applicants as required by the various federal agencies. Evaluate and report results of tests and evaluate applicants in accordance with specified job descriptions. (20%)
- Research, study, and assist in the development and recommendation of the implementation of a program or policy involving the selection of cost effective hiring and identify most efficient modes of recruitment. This duty includes maintenance of communication with job providers, placement agencies and applicants during the course of procurement to ensure timely employment in compliance with the contract or agreement or solicitation letter from the government. (15%)
- Ensure that the petitioner hires qualified employees and/or professionals at the most competitive levels available. Maintain competitive bid process to ensure most competitive cost. (10%)
- Participate in the drafting, execution of contracts or agreements with respect to procurement of qualified manpower. Maintain and review these contracts and agreements to ensure that the terms and stipulations therein are complied with and followed by all involved. (20%)
- Perform final quality assurance tests on qualified applicants selected by the petitioner by checking against the invoice to verify conformity of the services as to qualification, reliability, and character. (5%)
- Participate in the development of the strategic plans in procurement, budget and forecast, and anticipate price and quality changes in the services to be procured or provided. (5%)

The petitioner asserted that the beneficiary was qualified to perform the duties of the proffered position based on her bachelor of science degree in the field of education from West Visayas State College in the Philippines, granted in March 1985, and sixteen years of work experience as a schoolteacher (eight years), college administrator and instructor (five years), and college supply officer (three years).

In response to the RFE the petitioner submitted another list of the job duties which appears to indicate that the position involves not just the provision of personnel to federal agencies, but also the provision of material items.

In his decision the director found that the proffered position is similar to a cost estimator as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, that cost estimators were a specialty occupation because they required a degree in a specific specialty, but that the beneficiary was not qualified to perform the services of the proffered position because she lacked the specialty degree required under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

On appeal counsel asserts that the beneficiary's combination of educational degree (a B.S. in education) and work experience as a college instructor, teacher coordinator, and supply officer make her qualified to perform the duties of the proffered position. According to counsel, the duties the beneficiary performed at Iloilo State College of Fisheries as a teacher coordinator from 1994 to 1999 – including (a) responsibility for qualifications, professionalism, and policy implementation, (b) employment services with respect to medical programs, employee training, problem resolution and communication, affirmative action and compliance, and (c) quarterly training and seminars – and the duties she performed as a supply officer at the same college from 1999 to 2002 – including (a) creating a database program of suppliers and their products, cost estimates, and inventories, (b) evaluating prices, quality, and availability of supplies and timely delivery, and (c) participating in deliberations and voting as a bidding committee member – are closely related to the duties of the proffered position.

Before addressing the question of whether the beneficiary is qualified to perform the services of the proffered position, the AAO will revisit the director's determination that the subject position qualifies as a specialty occupation as defined in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(iii)(A). In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The AAO agrees with the director that the proffered position in this case falls within the *Handbook's* occupational category of cost estimator. As for the educational requirements of the occupation, the *Handbook*, 2004-05 edition, at 79-80, states as follows:

Job entry requirements for cost estimators vary by industry. In the construction industry employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. However, most construction estimators also have considerable construction experience, gained through work in the industry, internships, or cooperative education programs

In manufacturing industries, employers prefer to hire individuals with a degree in engineering, physical science, operations research, mathematics, or statistics; or in accounting, finance, business, economics, or a related subject. In most industries, great emphasis is placed on experience involving quantitative techniques

Many colleges and universities include cost estimating as part of bachelor's and associate degree curriculums in civil engineering, industrial engineering, and construction management or construction engineering technology Organizations representing cost estimators . . . also sponsor educational and professional development programs Specialized courses and programs in cost estimating techniques and procedures also are offered by many technical schools, community colleges, and universities.

As indicated above, a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a cost estimator position. A wide variety of degrees is suitable for cost estimators in the construction and manufacturing industries, and the degree may not be in a specific specialty directly related to cost estimation. It is clear from the *Handbook* that sub-baccalaureate educational programs and on-the-job training and experience are also primary vehicles for learning the trade of cost estimation, and may substitute for a baccalaureate degree. The AAO concludes, therefore, that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the proffered position in this case, as required for it to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes four internet job announcements from companies in the Los Angeles area for senior buyers, a procurement specialist, and a purchasing manager. Two require a B.A. or B.S. degree in business or a related field, one requires a B.A. or B.S. without specifying a particular field, and one requires a degree or equivalent work experience. The positions all differ from the proffered position in that they involve the purchase, rather than the sale, of goods and services. None of the advertising companies is in the same line of business as the petitioner. Thus, the internet job announcements do not represent persuasive evidence that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor has the petitioner demonstrated that its professional services bidding analyst position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for the position to qualify it as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner has submitted a list of eleven individuals which it states were hired for professional services bidding analyst positions in the past, all of whom had bachelor of science degrees. No documentation has been submitted in support of this assertion. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972). Furthermore, the degrees are in many different fields including civil engineering, computer engineering, business administration, electronics and communications engineering, commerce, information and computer science, pharmacy, and mechanical engineering. Thus, the list clearly shows that the proffered position does not require a degree in a specific job-related specialty. Furthermore, the petitioner has submitted its job announcement for the position of

professional services bidding analyst which states that the minimum requirements are a “bachelor’s degree or equivalent and relevant work experience.” The announcement does not state that a bachelor’s degree in a specific specialty directly related to the job is required. Accordingly, the record does not establish that the petitioner normally requires a degree in a specific specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties are so specialized and complex that they require a depth of knowledge usually associated with the attainment of a baccalaureate degree in a specific specialty. As far as the record shows, the knowledge required to perform the services of the professional services bidding analyst do not exceed those normally encountered in the field of cost estimation.

For the reasons discussed above, the record does not establish that the position proffered to the beneficiary meets any of the four criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner has not established that the beneficiary will be coming to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Even if the professional services bidding analyst position were a specialty occupation, the AAO agrees with the director that the beneficiary is not qualified to perform the services of a specialty occupation. As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform the services of a specialty occupation an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As indicated earlier, the beneficiary has a bachelor of science degree in the field of education from a college in the Philippines. According to an educational credentials evaluation report of New Lifeline (CA), Inc. of Culver City, California, the beneficiary’s degree is equivalent to a bachelor of science in education from an accredited college or university in the United States. Thus, the beneficiary’s degree is not in a specialty field required by the occupation at issue, as the regulations prescribe. To show that the beneficiary’s education, specialized training and/or progressively responsible experience is equivalent to a

U.S. baccalaureate degree in the specialty, which could qualify her to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must submit credible evidence that satisfies one or more of the documentary criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

There is no documentation in the record to establish the beneficiary's qualifications for any specialty occupation under criteria 1, 2, or 4. Nor does the record establish the beneficiary's qualifications under criterion 3, because the educational credentials evaluation of New Lifeline (CA), Inc. simply confirms that the beneficiary's foreign degree is in an area unrelated to a cost estimator or professional services bidding analyst position. As for the fifth criterion, counsel asserts on appeal that the beneficiary has eight years of work experience directly applicable to the proffered position. The only evidence in the record of any employment by the beneficiary is a letter from the Iloilo State College of Fisheries, dated April 10, 2002, certifying that the beneficiary had been employed as a schoolteacher or instructor since 1989 but without further describing her duties. The letter does not record any work experience related to the field of cost estimation or the proffered position of professional services bidding analyst, as required for the experience to be considered as counting toward the equivalent of a U.S. degree in the specialty. The record also fails to demonstrate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree in the field, or that the alien has documented recognition of expertise in the specialty. For the reasons discussed above, the record fails to establish that the beneficiary's education, training and/or work experience is the equivalent of a bachelor's degree from a U.S. college or university in a specific specialty directly related to the proffered position under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D).

In conclusion, the petitioner has failed to establish that the beneficiary is qualified to perform the services of a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2 (h)(4)(iii)(C).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's denial of the petition.

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