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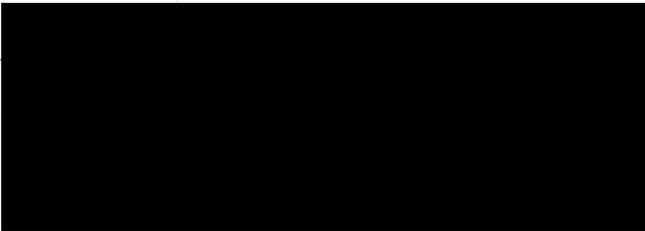
FILE: WAC 03 246 52475 Office: CALIFORNIA SERVICE CENTER Date: **SEP 21 2005**

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

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 provides insurance and financial services. It seeks to employ the beneficiary as a construction/property consultant. 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 previously submitted evidence.

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.

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 a construction/property consultant. 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 projecting risk evaluations; handling pre-insurance sales inspections; evaluating property and structural damage from water, collapse, and fire losses; conducting real estate inspections before selling insurance; carrying out constructability evaluations and developing risk models to manage and control schedule and cost risks; implementing process methodologies to control/prevent construction claims; handling construction defect cases and preparing repair completion reports; maintaining knowledge of construction practices, structural design, and acceptable and satisfactory work by trade crews; resolving issues relating to claims, including coverage analysis and delay/impact investigations; and training others on project management methodologies and tools to enhance the petitioner's ability to handle large-scale initiatives and maintain profitability. The petitioner stated that the proposed position requires at least a bachelor's degree in construction, engineering, or a related discipline and skill and experience in construction management, contracts administration and/or procurement, claims processing, cost estimating and scheduling, and project controls.

The director stated that the proposed position resembles a construction manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that employers do not require a baccalaureate degree in a specific specialty for this position. The director found that no evidence established that the proposed position qualifies as a specialty occupation.

On appeal, counsel states that the proposed position combines the functions of an operations research analyst and a construction manager, and that the *Handbook* reveals that employers require at least a master's degree for this. Counsel claims that the beneficiary will carry out extensive computer modeling and simulation; and that the position requires a rigorous foundation in engineering design and analysis, and knowledge in civil engineering, computer science, and management.

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.Minn. 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.

The proposed duties are encompassed within the description of a claims adjuster and appraiser as those occupations are depicted in the *Handbook*. The AAO sets forth the *Handbook* text about these occupations here:

Adjusters plan and schedule the work required to process a claim that would follow, for example, an automobile accident or damage to one's home caused by a storm. They investigate claims by interviewing the claimant and witnesses, consulting police and hospital records, and inspecting property damage to determine the extent of the company's liability. Adjusters may also consult with other professionals, such as accountants, architects, construction workers, engineers, lawyers, and physicians, who can offer a more expert evaluation of a claim. The information gathered, including photographs and written or taped statements, is set down in a report that is then used to evaluate a claim. When the policyholder's claim is legitimate, the claims adjuster negotiates with the claimant and settles the claim. When claims are contested, adjusters will work with attorneys and expert witnesses to defend the insurer's position.

...

Another occupation that plays an important role in the accurate settlement of claims is that of the *appraiser*, whose role is to assess the cost or value of an insured item.

The beneficiary will project risk evaluations; handle pre-insurance sales inspections; evaluate property and structural damage from water, collapse, and fire; conduct real estate inspections before selling insurance; carry out constructability evaluations and develop risk models to manage and control schedule and cost risks; implement process methodologies to control/prevent construction claims; handle construction defect cases and prepare repair completion reports; maintain knowledge of construction practices, structural design, and acceptable and satisfactory work by trade crews; resolve issues relating to claims, including coverage analysis and delay/impact investigations; and train others on project management methodologies and tools. Similarly, an appraiser assesses the cost or value of an insured item; and a claims adjuster plans and schedules the work required to process a claim for damage, for example, to a home caused by a storm; investigates claims by inspecting property damage to determine the extent of the company's liability; consults with architects,

construction workers, engineers, and accountants, who can offer a more expert evaluation of a claim; and evaluates, negotiates, and settles the claim.

The *Handbook* reports the following about the qualifications required for a claims adjuster and an appraiser:

Training and entry requirements vary widely for claims adjusters, appraisers, examiners, and investigators. Although many in these occupations do not have a college degree, most companies prefer to hire college graduates. No specific college major is recommended, but a variety of backgrounds can be an asset. A claims adjuster, for example, who has a business or an accounting background might specialize in claims of financial loss due to strikes, equipment breakdowns, or damage to merchandise. College training in architecture or engineering is helpful in adjusting industrial claims, such as those involving damage from fires or other accidents. Some claims adjusters and examiners apply expertise acquired through specialized professional training to adjust claims. . . .

In light of the above passage, the *Handbook* indicates that employers do not require a bachelor's degree in a specific specialty for a claims adjuster or an appraiser; and since the proposed position is similar to these occupations, it would not require a bachelor's degree in construction, engineering, or a related discipline.

The AAO notes that the petitioner's job announcement that is placed on Allstate letterhead does not state that the petitioner requires a bachelor's degree in construction, engineering, or a related discipline for the position of a construction/property consultant.

For the reasons set for above, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position.

The submitted job postings fail to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a specific degree requirement is common to the industry in parallel positions among similar organizations. Construction Placement does require a bachelor's degree. Zurich North America is a billion dollar insurance and financial services company; thus, it is not similar to the petitioner, a small insurance/financial services provider with four employees. Therefore, the postings fail to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* discloses that the proposed position is analogous to a claims adjuster and an appraiser, which are occupations that do not require a bachelor's degree in a specific specialty.

No evidence establishes 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 them is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that the proposed position is comparable to a claims adjuster and an appraiser, which are occupations that do not require a bachelor's degree in a specific specialty. As such, the petitioner fails to establish this last 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.