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20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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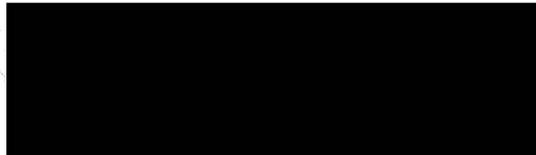
FILE: EAC 04 061 50641 Office: VERMONT SERVICE CENTER Date: JUN 22 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 custom and specialized door shop that seeks to employ the beneficiary as a door fabricator/installer. 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 on the grounds that the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

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 door fabricator/installer. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail designing, fabricating, installing and servicing specialized doors from large door openings; repairing flooring in both residential and commercial areas where the doors will be installed; and supervising unskilled laborers occasionally. The evidence further indicates that performing such duties requires "knowledge of electro-pneumatic door machines" and "extensive knowledge of specialized doors including but not limited to pocket doors, double swing doors, café doors, lead lined doors, b-labeled, c-labeled doors, 2-hour plus doors, handicapped doors and/or equipment doors."

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 director found that the proffered position was not a specialty occupation because the job description states that a college degree is preferred but not required, and because no additional evidence was submitted to demonstrate that a baccalaureate degree is a minimum requirement for the position in the petitioner's business or in the custom and specialized door industry. The director also found that the petitioner failed to submit evidence to establish the other criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel does not contend that the director erred in her application of the first three criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), but asserts only that the previously submitted evidence demonstrates that the proffered position satisfies the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). 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), including the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). 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): whether 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 the 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, 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)). The petitioner failed to submit any evidence related to these specific factors. The record does not include any evidence regarding parallel positions in the petitioner's industry or any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Though the petitioner makes no reference to the *Handbook* or similar materials, the evidence in the record suggests that the proffered position is that of a specialized woodworker. The *Handbook* does not list a baccalaureate degree as a normal minimum educational requirement for woodworkers. According to the *Handbook*, woodworkers generally learn their craft through on-the-job training. There is insufficient evidence to support a finding that the duties of the proffered position are so complex or unique that the position can be compared

to design occupations (i.e. commercial and industrial designers) that may require a baccalaureate degree. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): whether the employer normally requires a degree or its equivalent for the position. As stated above, the job description submitted by the petitioner indicates that the petitioner does not require a baccalaureate degree or its equivalent for the proffered position. The petitioner did not submit any evidence to indicate that it has ever required a baccalaureate degree for the proffered position. Furthermore, of the petitioner's eight employees, only the general manager is required to have a baccalaureate degree, and this a degree in business management rather than in a specialty specifically related to the design, fabrication, installation and servicing of custom and specialized doors. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO examines the criterion addressed by counsel on appeal, namely the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): whether the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner requires at least ten years specialized training for the position, which does not equate to a baccalaureate degree, using the three years work experience for one year university study rule found at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The petitioner's training requirements do not establish that the position requires a baccalaureate degree in a specialty. The position is not described as more complex than that of a specialized woodworker, an occupation that the *Handbook* indicates does not require advanced study. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As demonstrated 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.