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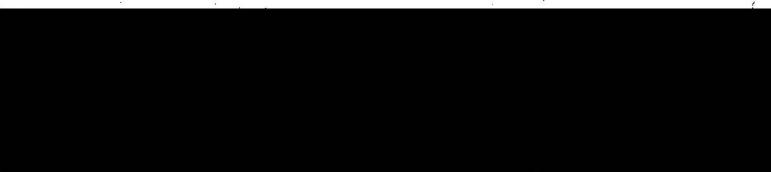
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**U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529**



**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 06 243 53479 Office: CALIFORNIA SERVICE CENTER Date: JAN 04 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:



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 black ink, appearing to read "Elizabeth Wiemann".

Robert P. Wiemann, Chief
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 is a manufacturer and distributor of diamond tools that seeks to employ the beneficiary as a cost estimator. 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) former counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with new counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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:

- (I) 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) consistently interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as a cost estimator. Evidence of the beneficiary's duties includes: the petitioner's July 17, 2006 letter in support of the petition and former counsel's December 22, 2006 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

Compile and analyze data on all factors that may influence costs of manufacturing; such as materials, labor, location, and special machinery requirements. Estimate the costs associated with redesigning or customizing existing products, and the costs involved in the development of new products. Calculate the petitioner's cost for manufacturing specific parts and determine whether it would be more cost effective to purchase such parts. Prepare reports for management detailing the estimated costs in research and development projects and identify hidden costs and waste.

Updat[e] the computer database with projected cost estimates and the resulting actual costs of manufacturing projects. Prepare a parts list and make inquiries and update price information from potential suppliers.

The director found that the proposed cost estimator duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific

specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the petitioner has satisfied two criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel cites the DOL's *Handbook* and *O*Net* to state that a cost estimator requires a four-year bachelor's degree. Counsel submits a letter from the beneficiary's previous employer and Internet job postings as supporting documentation.

Preliminarily, counsel's interpretation of the *O*Net* is not persuasive that the proffered position is a specialty occupation. The *O*Net* does not 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. The *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The SVP rating does not describe 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.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO finds that the proffered position is similar to that of a cost estimator. Although a review of the *Handbook*, 2006-07 edition, finds that, in some instances, the occupation of a cost estimator may qualify as a specialty occupation, the petitioner in this matter has not established that the proffered position is a specialty occupation. The *Handbook* reports that the duties of a cost estimator in the manufacturing industry include: working with engineers, first reviewing blueprints or conceptual drawings; determining the machining operations, tools, gauges, and materials that are needed for the job; preparing a parts list and determining whether it is more efficient to produce or to purchase the parts by initiating inquiries for price information from potential buyers; and determining the cost of manufacturing each component of the product.

Regarding the education requirements of a cost estimator, the *Handbook* indicates:

Job entry requirements for cost estimators vary by industry. . . . 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 field. . . .

Regardless of their background, estimators receive much training on the job, because every company has its own way of handling estimates.

The petitioner has provided a general description of the proposed duties of the position that generally tracks the information in the *Handbook* regarding the nature of the duties of a cost estimator. However, while such a generalized description is necessary when defining the range of duties that may be performed within an occupation, the petitioner cannot rely on such generalities when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed in this position in relation to specific projects, but rather has provided a generic description of the duties of the occupation of a cost estimator. The AAO cannot discern from the general description provided that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge attained through the completion of a bachelor's or higher degree in a specific specialty. The petitioner has failed to establish the necessity of a bachelor's or higher degree for the proffered position.

The AAO acknowledges the *Handbook's* indication that employers in the manufacturing industry prefer that cost estimators have a bachelor's degree in specific disciplines; however, employer preference is not synonymous with the "normally required" language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The *Handbook* does not report a degree requirement for the occupation of cost estimator.

Moreover, information on the petition that was signed by the petitioner's president on July 19, 2006, reflects that the petitioner was established in 2005, has three employees and a gross annual income of \$80,000. The record contains a quarterly wage report for the quarter that ended on September 30, 2006, reflecting that the petitioner had two employees during the first two months of the quarter and three employees during the third month of the quarter. The record, however, contains no federal income tax returns to reflect the petitioner's claimed gross annual income. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not provided documentary evidence that it is currently engaged in any projects or has contracts to engage in any projects or is expanding. The record does not contain evidence that relates the broadly stated duties of the proffered position to the petitioner's tool manufacturing and distribution business in a concrete way.

Regarding parallel positions in the petitioner's industry, counsel submitted Internet job postings for positions related to cost estimators. The petitioner has not provided sufficient evidence that its business is similar to the advertising businesses in size, number of employees, or level of revenue. Moreover, as the record offers only a generalized description of the proffered position, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record contains evidence that CIS approved another petition that had been previously filed on behalf of the beneficiary. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by the petitioner are not sufficient to enable the AAO to determine whether the other H-1B petition was approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was erroneous, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), cert denied, 485 U.S. 1008 (1988).

The record does not include sufficient evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position involve duties that are complex or unique; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent only to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The petitioner has not demonstrated that the duties are 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 AAO here incorporates its discussion about the lack of concrete evidence about the petitioning entity. Due to the deficiencies discussed herein, the petitioner has not demonstrated that the proposed duties entail the specialization and complexity required by this criterion. Absent a meaningful description of the duties of the proffered position as the duties relate to the petitioner's business and substantiated by documentary evidence of the petitioner's business operations, the petitioner has not distinguished the proffered position based on the specialization and complexity of its duties from the routine duties of a cost estimator, an occupation that does not require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific field. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

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