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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 04 004 51573 Office: TEXAS SERVICE CENTER Date: MAY 17 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 documents 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 director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for the entry of a new decision.

The petitioner provides construction and project management services for the wireless telecommunications industry. It seeks to employ the beneficiary as a construction manager. 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 additional 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 manager. 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 planning construction functions and sequences of work at various sites to ensure the optimum use of the work force and equipment; directing, supervising, and coordinating workers; hiring and terminating workers; purchasing materials and ensuring they are on-site; laying out the base-map and site measurement; planning, budgeting, and directing construction projects; ensuring compliance with building and safety codes; interfacing with clients, subcontractors, and architects; evaluating construction methods and determining which is most cost-effective; and inspecting work at the site for contractual compliance, adherence to engineer's and architect's drawings and specifications, and prevailing building codes. The petitioner stated that the job involves project control and development, inventory control, site planning, design, estimating using computers with specialized software, and construction management. According to the petitioner, the construction projects include installation of plumbing systems, lighting, carpentry, masonry, and concrete work. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in construction management.

The director determined that the petitioner failed to establish that the proposed position is a specialty occupation as defined under the Act, and failed to demonstrate that the position satisfies one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 a baccalaureate degree in a specific specialty is not required for this position. The director found the letters from [REDACTED] of the American Institute of Constructors and [REDACTED] of Seattle Pacific University unpersuasive in establishing that the proposed position qualifies as a specialty occupation. The director found [REDACTED] letter did not elaborate on how the proposed position qualifies as a specialty occupation, and that she did not submit evidence to support her conclusion that a construction manager is a specialty occupation. The director also found that [REDACTED] did not refer to any evidence to support his assertion that the proposed position's duties are so complex as to require a bachelor's degree.

On appeal, counsel states that the proposed position is a specialty occupation, and that the denial letter did not discuss the expert opinion of [REDACTED] Ph.D., an assistant professor in the Department of Civil, Construction, and Environmental Engineering at Oregon State University. Counsel maintains that the submitted letters from the president of the Construction Education Foundation, the director of the Associated General Contractors of America, the executive director of the American Institute of Constructors, [REDACTED] and [REDACTED] and the excerpt from the *American Institute of Constructors Certificated Professional Construction Candidate Handbook* establish that the proposed position qualifies as a specialty occupation. Counsel asserts that CIS should not rely significantly on the *Handbook* in its determination of whether the proposed position is a specialty occupation, and references the court's decision in *Unico American Corp. vs. Watson*, to support this view. Counsel states that although the petitioner is not a

large construction company, it might still have a preference to employ candidates with a bachelor's degree. Counsel refers to a court decision which states that whether a position is professional is unrelated to the size of the petitioner. Counsel maintains that the submitted evidence is substantial and that a reasonable fact finder would have concluded that the proposed position is a specialty occupation.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation under the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A).

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 the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner is a wireless telecommunications management company that specializes in project and construction management. Its staff designs, implements, and manages network build-out construction projects for the wireless industry. As described by the petitioner, the proposed job duties are so specialized and complex as to require a bachelor's degree in construction management. Thus, the proposed position is a specialty occupation.

There is insufficient evidence to determine whether the beneficiary is qualified to perform the duties of the proposed position. The beneficiary does not hold a bachelor's degree in construction management, so the petitioner seeks to qualify the beneficiary for the proposed position based on his education, training, and work experience. The record contains two employment letters from [REDACTED] (dated August 23, 2000 and December 30, 2003). It is apparent that [REDACTED] signature on the two letters is dissimilar; thus, the AAO cannot conclude that [REDACTED] signed both letters. The AAO also observes that the first letter is on the company letterhead of [REDACTED] and the second is not, and that the second letter from [REDACTED] greatly expands the beneficiary's job duties. The record also contains two employment letters from [REDACTED] (dated May 16, 1994 and December 31, 2003). It is apparent that [REDACTED] signature on the two letters is dissimilar; as such, the AAO cannot conclude that [REDACTED] signed both letters. In addition, the second letter greatly expands the beneficiary's job duties and includes new job titles. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, no evidence in the record reconciles or explains the inconsistencies in the letters from [REDACTED] and [REDACTED].

The evidence contained in the record fails to demonstrate that the beneficiary is qualified to perform the duties of the proposed position, construction manager, which requires a bachelor's degree or its equivalent in construction management. The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified for the proposed position, which requires a bachelor's degree or its equivalent in construction management. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's January 27, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.