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U.S. Citizenship
and Immigration
Services

APR 07 2005

FILE: WAC 00 045 51664 Office: CALIFORNIA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 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 construction company and seeks to employ the beneficiary as a carpenter supervisor. 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).

A copy of the director's determination is not in the record of proceeding, and a copy does not exist in the records of Citizenship and Immigration Services (CIS). The AAO attempted to obtain a copy of the director's decision from the employer, but there was no response to the AAO's request. The attorney of record has been suspended from the practice of law in the State of California, thus, it is not possible to obtain a copy of the decision from him. The petitioner's appeal, however, indicates that the director denied the petition because the proffered position did not qualify as a specialty occupation. On appeal, the petitioner indicates that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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:

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

The petitioner is seeking the beneficiary's services as a carpenter supervisor. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: supervise and coordinate activities of workers engaged in construction, installation, and repair of wooden structures/fixtures; examine blueprints to determine dimensions of structures; lay out floor plans and cabinetwork using rules, framing squares, and calipers; select materials and structural units such as lumber, prefabricated doors, and cabinets of wood or plastic and paneling, and inspects them to ensure conformance with provisions of building codes and local ordinances; determine sequence of activities concerned with fabrication, assembly, and erection of structure; assign workers to such tasks as cutting material to size, building concrete forms, erecting wooden framework, and laying flooring; inspect work performed by subcontractors, including ductwork, wiring, and pipe installation to ensure conformance with specifications; install doors, build stairs, and lay hardwood floors; and perhaps supervise workers building timber structures and make cost estimates for contracts. The petitioner requires a minimum of a bachelor's degree in construction management for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for carpenter supervisors. The *Handbook* notes that carpenters learn their trade through on-the-job training, as well as formal training programs. Most pick up skills informally by working under the supervision of experienced workers. Many acquire skills through vocational education or participate in employer training programs or apprenticeships. Carpenters may advance to carpentry supervisor or general construction supervisor positions through experience and good on-the-job performance. It is clear, however, that a bachelor's degree in a specific specialty is not normally the minimum requirement for entry into the offered position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted five statements from other contractors/construction companies. Each states that it is standard in the industry for a construction superintendent to have a bachelor's degree in construction management. It is unclear what job duties the opinion writers reviewed when stating their opinions as the duties of the proffered position are not those of a construction superintendent, but those of a carpenter supervisor. Furthermore, none of the opinions provide any basis for the opinion such as reference to any industry survey or Department of Labor documentation. As such, the opinions are of little evidentiary value and the petitioner has failed to establish the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a bachelor's degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. Thus, the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been established.

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for carpenter supervisors and similar employees. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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