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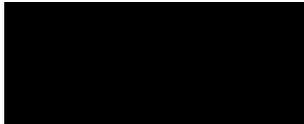
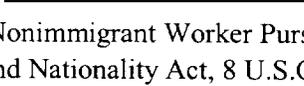
U.S. Citizenship  
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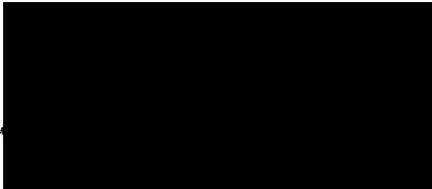
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FILE: WAC 03 180 53685 Office: CALIFORNIA SERVICE CENTER Date: **AUG 24 2005**

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, 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 sustained. The petition will be approved.

The petitioner is involved in the custom fabrication and installation of marble and stone slabs and tiles and seeks to employ the beneficiary as a marble cutting artisan. 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and states that the offered position qualifies as a specialty occupation.

The first 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 Immigration and Nationality Act (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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a marble cutting artisan. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Design, cut, polish, and install marble for custom installations;
- Analyze artistic objects such as models, sketches and blueprints, visualize finished products and plan cutting techniques for custom chimneys, columns, and architectural structures, and will layout figures or make designs on stone and marble surfaces by freehand, sketching or trace patterns, then transfer the dimensions from diagrams to stone;
- Select surfacing tools and chip stone fragments away from marks to work the surface down to a specified finish, and will dress stone surfaces and cut decorative designs, including moldings or grooves; and
- Assure optimal consistency and quality with the petitioner’s customer requirements.

The petitioner requires a minimum of a bachelor’s degree in architecture, structural engineering or a related field for entry into the offered position.

The AAO routinely consults the U.S. 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 a combination of duties normally performed by designers and brickmasons, blockmasons and stonemasons.

Upon review of the record, the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). While performance of the duties of brickmasons, blockmasons, and stonemasons do

not normally require the attainment of a baccalaureate or higher degree, the duties of designers do. The *Handbook*, 2004-05 edition, notes that a bachelor's degree is required for most entry-level design positions and that acceptable degrees in fine arts are granted at 4-year colleges and universities. The curriculum in these schools includes art and art history, principles of design, designing and sketching, and specialized studies for each of the individual design disciplines, such as garment construction, textiles, mechanical and architectural drawing, computerized design, sculpture, architecture, and basic engineering. Persons with training or experience in architecture qualify for some design occupations, particularly interior design. The 2000-01 edition of the *Handbook* notes that academic training leading to a bachelor's degree in art or design had virtually become a necessity in the industry. The proffered position does, therefore, qualify as a specialty occupation.

The final issue to be determined is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not determine this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The beneficiary's foreign education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in architectural engineering from an accredited university in the United States. That degree is closely related to the duties of the proffered position, and qualifies the beneficiary to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 sustained that burden and the appeal shall accordingly be sustained.

**ORDER:** The appeal is sustained. The petition is approved.