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U.S. Citizenship
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FILE: WAC 04 143 50479 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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 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 sustained. The petition will be approved.

The petitioner is a construction development contractor. In order to employ the beneficiary as a project director, the petitioner filed this petition to classify the position as an H-1B nonimmigrant worker in a specialty occupation, 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).

The director denied the petition on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A). In part, the director determined that the proffered position comports with the construction manager occupational category described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, and that the *Handbook* indicates that "although a baccalaureate level of training is increasingly preferred, the position of Construction [M]anager is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation." (Underlining in the original.)

On appeal, counsel contends that the director based his decision on a misapprehension of the nature of the proffered position, as the beneficiary "will be spending over 75 percent of his time on matters unrelated to managing the actual construction phase" of the projects in which he will be involved. (Brief at page 4.) Counsel asserts that the proffered position qualifies as a specialty occupation by virtue of the complexity, uniqueness, and specialization of its duties. Counsel also argues that the proffered position is one for which employers in the petitioner's business usually require a degree in a specific specialty, and that the petitioner itself "has always required a minimum of a bachelor's degree education, preferably in specialized fields such as architecture and real estate." (Brief at page 9.)

The AAO concurs with the director's determination that the petitioner has not satisfied the specialty occupation criteria of 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) through (3). The AAO notes in particular that, contrary to counsel's assertions, the letters submitted from two other firms do not establish that the proffered position is one for which employers in the petitioner's industry normally require a baccalaureate or higher degree in a specific specialty. Neither of the two letters states a requirement for a degree in a specific specialty, and neither conveys the extent of the author's knowledge about the particular newly-offered position at issue, the specific duties that it would involve, and industry recruiting and hiring practices for such a position.

However, as discussed below, based upon its review of the totality of the specific evidence presented in this record of this proceeding, the AAO finds that the petitioner has established that the proffered position satisfies the specialty occupation criterion specified at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) for positions where "[t]he 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."

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

According to the Form I-129 (Petition for Nonimmigrant Worker), the petitioner employs four persons and has a gross annual income of approximately \$2.7 million dollars. The petitioner's April 1, 2004 letter of support filed with the Form I-129 includes the following list of specific duties that would engage the beneficiary as the person who "will primarily be responsible for various projects from determining the situs of construction to the supervision and coordination of the construction phase":

- 1) Research market conditions for real estate prices and availability of various sites for real estate development projects;
- 2) Evaluate demographics and demand for residential property of given geographical area to determine viability of development project;
- 3) Contact and work with real estate lenders to determine current loan rates to formulate and plan budgeting for a given project;
- 4) Prepare and devise a project budget based on project size [and] schedule and submit [it] to the lenders to obtain project financing; and
- 5) Report status of projects to management and make adjustments accordingly;

(Approximately 50% of the time will be spent on the above duties)

- 6) Based on project size and available financing for the project, work with Architecture team to devise a general layout and to determine number of residential units to build on the given situs;
- 7) Review and analyze final architectural layout of the project and determine time frame, general procedures, [and] staffing requirements including need for various contractors to complete the project;
- 8) Prepare final project plan and submit [it] to management for review and make changes accordingly[;]

(Approximately 25% of the time will be spent on the above duties)

- 9) Negotiate with contractors and on various services needed for the development project taking into account the total budget for completion;
- 10) Regularly supervise and visit construction site[s] and confer with the Construction Manager to obtain status of the on-going project;
- 11) Inspect the property being built on regular basis and submit design and/or technical changes to the architects;
- 12) Prepare interim and final project reports.

(Approximately 25% of the time will be spent on the above duties)

The duties related in the copy of the job announcement submitted into the record describes the duties as follows:

Research market conditions for real estate prices and availability of various sites for real estate development projects. Evaluate demographics and demand for residential property of given geographical area to determine viability of a development project. Contact and work with real estate lenders to determine current loan rates to formulate and plan budgeting for a given project. Prepare and devise a project budget based project size, schedule and submit to the lenders to obtain project financing. Report status of projects to management and make adjustments accordingly.

The job announcement also stated: "Require BA/BS Degree in Real Estate, Engineering or related degree required [sic]. Bilingual in Korean a great plus!"

The record establishes that the petitioner's business involves distinct areas described by the petitioner as project management, consultation on property development, and property development, as well as construction management. As the petitioner acknowledges, some of the proposed duties would be in construction management; and the director correctly determined that those duties do not appear to comprise a specialty occupation position. However, the evidence of record substantiates counsel's identification of the beneficiary's "main function as a land/property development project director" (brief at page 6), and it also establishes that the beneficiary would primarily be engaged in property-development services that would require the application of highly specialized knowledge in the area of real estate development.

The AAO finds that the descriptions of the duties of the proffered position, the information provided about the property development aspects of the petitioner's business operations and about the beneficiary's proposed role in them, and the additional details that counsel provides on appeal about the property development duties and the associated applications of highly specialized knowledge combine to establish that the duties are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Therefore, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary has a Master's Degree in Professional Studies (Real Estate) from Cornell University, Ithaca, New York, indicating that she is qualified for this specialty occupation.

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. Accordingly, the appeal will be sustained.

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