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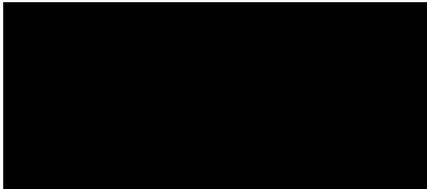
FILE: WAC 04 256 51396 Office: CALIFORNIA SERVICE CENTER Date: APR 26 2006

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, Chief
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, a general contractor, seeks to employ the beneficiary as a construction project engineer and to classify him 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 on the basis that the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the RFE; (4) the

director's denial letter; and (5) the Form I-290B with brief 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 project engineer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment, the petitioner's response to the RFE and the petitioner's revised support letter submitted on appeal. The petitioner listed the following proposed duties in the initial petition:

1. Analyze, research and design engineering specifications, drawings and schematics of construction projects including costs, time estimates for construction bidding projects.
2. Analyze and review construction requirements, data and blueprints to plan and design construction projects.
3. Develop detailed engineering analysis and calculations to determine feasibility of projects based on analysis of collected data applying knowledge and techniques of construction engineering and mathematics.
4. Prepare engineering construction plans, reports, specifications, safety and environmental impact analysis and designs for projects.
5. Monitor and inspect construction site to monitor progress and ensure compliance with engineering plans, specifications and construction and safety standards.
6. Prepare engineering and design plans using computer-aided software.
7. Prepare construction report on all projects with emphasis on engineering, safety, and costs projections.

The petitioner stated that the position required the beneficiary to possess a bachelor's degree in engineering.

In response to the RFE the petitioner submitted this list of proposed duties:

- Act as project engineer for construction work.
- Manage and coordinate construction projects and prepare construction schedules.
- Plan, organize, direct, control and evaluate construction projects from start to finish according to schedule, specifications, and budget.
- Ensure construction plans meet guidelines and specifications of building codes and other regulations.
- Establish and monitor construction work schedules.
- Prepare contract documents and review and evaluate tenders for construction projects.
- Prepare and submit construction project estimates.
- Prepare bids for construction and renovation projects.
- Prepare estimates of probable costs of materials, labor and equipment for construction projects based on contract bids, quotations, schematic drawings and specifications.

On appeal, the petitioner submits another list of proposed duties divided between “pre-construction” duties, “construction” duties, and “post-construction” duties. The list of duties is as follows:

Pre-construction:

- Confer with clients and other members of the engineering team and conduct research to determine project requirements
- Conduct site inspections
- Prepare contract documents and review and evaluate tenders for construction projects
- Review engineering plans and specifications, prepare material take-off and cost estimates
- Prepare and submit construction project budget estimates
- Prepare bid proposals
- Plan and prepare construction schedules and milestones
- Prepare contracts and negotiate revisions, changes, and additions to contractual agreements with architects, consultants, clients, suppliers, and subcontractors
- Represent company on matters such as business services
- Develop construction specifications and procedures

Construction:

- Plan, organize, direct, control and evaluate construction projects from start to finish according to schedule, specifications and budget
- Ensure construction plans meet guidelines and specifications of building codes and other regulations
- Establish and monitor construction work schedules
- Act as project engineer for construction work
- Prepare progress reports and issue progress schedules to clients
- Coordinate with the General Contractor/Owner/Construction Manager and other Engineering Disciplines (Electrical/Sanitary/Mechanical/Etc.) during all phases of construction

Post Construction:

- Review and supervise implementation of punch lists
- Prepare value engineering report for each project

Under the description of the proposed position, the petitioner listed the names of nine members of the engineering crew, presumably who would work under the construction project engineer. The complete job description of the engineering crew was as follows: “install and service flooring products in residential and commercial properties.”

The director found that the proposed position was not an engineering position but that of a construction manager that oversaw the installation of flooring, a position that did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the position of construction manager is in transition to that of a specialty occupation. Counsel asserts that the submitted job announcements show that a bachelor's degree in civil engineering is the normal minimum requirement for the proposed position and that the complexity of construction management projects is increasing and that employers are increasingly seeking individuals with bachelor's degrees in construction management, civil engineering, or related fields. Counsel asserts that the petitioner does not only install flooring but also works in conjunction with other construction professionals to plan, organize, and complete buildings. Finally, counsel asserts that the petitioner's revised company support letter submitted on appeal shows that the proposed position involves several duties associated with civil engineers and that the position of civil engineer requires a bachelor's degree in that specialty.

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 proposed position is not a specialty occupation.

To determine whether or not a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties of particular occupations. Based on a thorough review of the file and the *Handbook's* discussion of occupations involving construction, the AAO finds that the proposed position most resembles that of a carpet and flooring installer/carpenter supervisor, not those of a construction manager. The record reflects that the beneficiary will supervise a crew of nine in the installation of a variety of floor coverings and in the remodeling of individual residential apartment units. Although the petitioner describes the job duties of a construction manager, no evidence of record demonstrates that the beneficiary's duties would exceed the competency of a carpet and floor installer/carpenter supervisor. 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)).

In response to the RFE, the petitioner asserted that it was a general contractor specializing in the sales, distribution, and installation of all types of floor covering materials. The petitioner further asserted that it was "venturing into large private and government projects." The documentation the petitioner submitted with the RFE indicates that it installs a variety of flooring. The documents the petitioner submits on appeal reveals that the petitioner has expanded into remodeling individual residential condominium units. These documents do not establish that the petitioner handles large private and government projects that require the services of a construction manager with a degree in construction management, civil engineering, or a related field. *See Matter of Soffici*. On appeal, counsel asserts that the petitioner "works in conjunction with other construction professionals and contractors on a project site to plan, organize, and complete buildings." Again, the supporting documentation only reveals that the petitioner installs

flooring materials and renovates individual apartments by removing and disposing of plumbing fixtures, installing shower glass doors, and installing lighting. There is no documentation to support the assertion that the petitioner is involved in the construction of buildings. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel asserts on appeal that the proposed position includes duties associated with civil engineers, such as the review and analysis of construction specifications and ensuring compliance with safety codes and other regulations, but does not submit documentation to support that assertion. See *Matter of Obaigbena*.

The petitioner need only satisfy one of the criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) to show that a position is a specialty occupation. To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position. The *Handbook's* discussion of the educational requirements for carpeting and flooring installers and carpenters indicates that no formal education is needed to become a carpet or flooring installer or carpenter. Most skills necessary to perform the duties of these jobs can be acquired on the job. Individuals in those positions may advance to carpentry supervisor or general construction supervisor positions. As those without bachelor's degrees may be promoted into the position of carpet and flooring installer/carpenter supervisor, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position. The petitioner has not, therefore, satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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 petitioner did not submit a letter from a national association, survey results, or other such documents to establish an industry-wide requirement for a bachelor's degree in a civil engineering or a related field. The job announcements the petitioner submits either do not describe the duties with sufficient particularity to determine if they are similar to the proposed position, or are from companies dissimilar to the petitioner, a general contractor specializing in flooring and residential apartment remodeling with a construction crew of nine. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. See *Matter of Soffici*.

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, there is no evidence in the record to suggest, nor does the petitioner contend, that the proposed position qualifies for classification as a specialty occupation under this criterion. As such, the position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. On appeal, counsel asserts that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or its equivalent. Counsel did not submit evidence establishing that the proposed position is a specialty occupation based on its complexity, uniqueness, or specialized nature. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*. The duties of the proposed position are standard in the industry for supervisory carpeting and flooring installers/carpenters. They are not so complex or unique that only an individual with a degree in civil engineering or a related field can perform them. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's or higher degree in civil engineering or a related field. The documentary evidence submitted, including bid proposals for flooring and remodeling jobs, shows that the beneficiary will supervise a crew that will rip out floors, install carpet and vinyl, and replace shower doors and kitchen sinks. Although the documentation shows that the beneficiary is qualified to perform the duties of a specialty occupation, i.e., civil engineer, none of the documentation establishes that the position being offered to him requires a bachelor's degree in that specialty. The petitioner has not satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.