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FILE: WAC 05 096 50767 Office: CALIFORNIA SERVICE CENTER Date: DEC 04 2006

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, Chief
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 dismissed. The petition will be denied.

The petitioner is a full service structural and miscellaneous steel fabricator and erector company. In order to employ the beneficiary as a drafter, 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 on the basis that the evidence of record does not satisfy any specialty-occupation qualifying criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner asserts that, contrary to the director's decision, the proffered position qualifies as a specialty occupation under three of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner contends that: (1) the proffered position is one that normally requires a baccalaureate or higher degree; (2) the position is so complex that it can be performed only by an individual with a degree; and (3) the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO has determined that the director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's brief in support of the appeal.

In its June 1, 2005 letter replying to the RFE, the petitioner describes itself as "a full-service structural and miscellaneous steel fabricator and erector company . . . and a licensed . . . fabricator specializing in miscellaneous metal and structural steel" that provides "professional engineered structures and structural components to schedule and quality service customers in multiple market segments requiring [a] high volume of fabricated components and fabrication of miscellaneous metal structures."

Form I-129, Supplement H describes the proposed duties as "preparation of erection drawing & shop drawing by means of computer aided drafting (CAD), manual drafting, & estimating." The petitioner's June 2005 letter includes the following information about the proffered position:

The [petitioner's] drafting and engineering department knows how critical the timely delivery of detailed drawings for clients' approval. Efficiency and CAD productivity is one of our goals to our internal administration of the projects we undertake [sic].

To ensure timely delivery of clear, concise and accurate detail drawings, [the beneficiary's] tasks as a Drafter, will be required to:

- Read and interpret architectural and structural design drawings for the preparation of the erection and shop drawings
- Layout anchor bolt setting plan and miscellaneous embed [sic] plates.
- Detail columns and beams connection.
- Prepare estimate, bills of materials, and miscellaneous detail drawings e.g. stair, handrail, guardrail, ladder, fence and gate utilizing the special 3D steel detailing software so that [the petitioner] operates as a more efficient and profitable enterprise.

The above duties of the position are extremely complex, requiring the technical application of architectural and structural disciplines.

A drafter must posse's [sic] knowledge of American Institute of Steel Construction (AISC), Structural Welding Code-Steel and Uniform Building Code (UBC) requirements. Skills in geometric problem solving and its practical application are also necessary for higher quality detail drawings.

An experienced drafter would result to a shorter time frame for the company to meet the customer construction schedule and save a lot of time that makes detailing and fabrication more efficient and reliable. Given above mentioned necessary skills for a Drafter, [the petitioner] requires a minimum of a bachelor's degree in structural steel detailing for the Drafter position as do other firms in the industry.

On appeal, the petitioner identifies the following as "the job duties of the Drafter position":

1. Read and interpret architectural and structural design drawings for the preparation of shop drawings (40%)[;]

This will include the following activities[;] consulting and conferring with engineering, production to establish and evaluate design concepts for manufactured steel; modify and refine design concepts for manufactured steel; modify and refine designs to conform with customer specifications or changes in the design[.]

2. Lay-out anchor-bolt setting plan and miscellaneous embedded plates, detail column and beams connections (20%)[;]

The above translate to duties relating to direction and coordination of fabrication of models and the drafting of working drawings and specification sheet[s].

3. Prepare estimate, bills of materials (10%)[;]
4. Prepare detail drawings using a specialized 3D CAD steel detailing software (30%)[.]

On appeal, the petitioner asserts that the above listed duties “have essential elements of the duties of a Designer, which is an H-1B caliber position that requires a bachelor’s degree as minimum qualification (OOH [Department of Labor’s *Occupational Outlook Handbook (Handbook)*] 2004-2005),” and that they “indicates [sic] complexity that is beyond what is normally encountered in usual drafter position[s] that knowledge required to perform said duties is associated with the attainment of 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.

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.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

As the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, it consulted the 2006-2007 edition for information relevant to the proffered position and its duties.¹ The AAO finds that, to the extent that they are described in the record, the position and its duties comprise an architectural drafter position with additional duties of an administrative nature, namely, preparation of estimates and bills of materials. The *Handbook’s* section on drafters includes this discussion of their work:

The *Handbook* includes these comments about the drafter occupation:

Drafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products such as toys, toasters, industrial machinery, and spacecraft to structures such as houses, office buildings, and oil and gas pipelines. Drafters’ drawings provide visual guidelines; show the technical details of the products and structures; and specify dimensions, materials, and procedures. Drafters fill in technical details using drawings, rough sketches, specifications, codes, and calculations previously made by engineers, surveyors, architects, or scientists. For example, drafters use their knowledge of standardized building techniques to draw in the details of a structure. Some use their knowledge of engineering and manufacturing theory and standards to draw the parts of a machine to determine design elements, such as the numbers and kinds of fasteners needed to assemble the machine. Drafters use technical handbooks, tables, calculators, and computers to complete their work.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at www.stats.bls.gov/oco/. The AAO’s references are to the 2006-2007 print edition of the *Handbook*.

Traditionally, drafters sat at drawing boards and used pencils, pens, compasses, protractors, triangles, and other drafting devices to prepare a drawing manually. Most drafters now use CADD systems to prepare drawings. Consequently, some drafters may be referred to as *CADD operators*. CADD systems employ computers to create and store drawings electronically that can then be viewed, printed, or programmed directly into automated manufacturing systems. These systems also permit drafters to quickly prepare variations of a design. Although drafters use CADD extensively, it is only a tool. Persons who produce technical drawings with CADD still function as drafters and need the knowledge of traditional drafters, in addition to CADD skills. Despite the nearly universal use of CADD systems, manual drafting and sketching still are used in certain applications.

Drafting work has many specialties, and titles may denote a particular discipline of design or drafting.

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Architectural drafters draw architectural and structural features of buildings and other structures. These workers may specialize in a type of structure, such as residential or commercial, or in a kind of material used, such as reinforced concrete, masonry, steel, or timber.

As evident in the following excerpts on qualifications and opportunities, the *Handbook* indicates that a bachelor's degree in a specific specialty is not normally a minimum requirement for entry into the drafter occupation:

Employers prefer applicants who have completed postsecondary school training in drafting, training that is offered by technical institutes, community colleges, and some 4-year colleges and universities. Employers are most interested in applicants with well-developed drafting and mechanical drawing skills; knowledge of drafting standards, mathematics, science, and engineering technology; and a solid background in CADD techniques. In addition, communication and problem-solving skills are important.

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Opportunities should be best for individuals with at least 2 years of postsecondary training in a drafting program that provides strong technical skills, as well as considerable experience with CADD systems. CADD has increased the complexity of drafting applications while enhancing the productivity of drafters. It also has enhanced the nature of drafting by creating more possibilities for design and drafting. As technology continues to advance, employers will look for drafters with a strong background in fundamental drafting principles, a high level of technical sophistication, and the ability to apply their knowledge to a broader range of responsibilities.

The record of proceeding contains no evidence to support a finding that the additional administrative duties, alone or in combination with the drafting duties, elevate the proffered position to one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. The petitioner's contrary assertion is not supported by the evidence, and therefore, has no merit. The AAO also finds that the evidence of record does not support the petitioner's argument, first asserted on appeal, that the proposed duties "have essential elements of the duties of a Designer, which is an H-1B caliber position that requires a bachelor's degree as minimum qualification." The petitioner's assertion without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. 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)).

Further, on appeal, or when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits recognition as a specialty occupation. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). To have significant changes to the content of a petition considered – such as converting a drafter's position to one that involves a bachelor's degree level of designing duties – the petitioner must file a new petition, with fee and an appropriate, certified Labor Condition Application, that incorporates those changes.

For the reasons discussed above, the petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "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)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Here the evidence of record fails to establish that the proffered position is unique from or more complex than positions which are essentially those of drafters who also prepare estimates and bills of material; and neither the *Handbook* nor any evidence of record establishes that such positions can be performed only by persons with at least a bachelor's degree, or the equivalent, in a specific specialty. The evidence of record does not substantiate the petitioner's assertion that the "position is so complex in itself, that duties associated with it can be performed only by an individual with a degree in engineering or architecture."

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor, as the petitioner has not presented evidence that the proffered position is one for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO has considered but discounts the petitioner's assertion on appeal that the proffered position "is so complex in itself, that duties associated with it can be performed only by an individual with a degree in engineering or architecture." The petitioner asserts:

The [proffered] position entails analysis of product and design requirements, communicating with other professionals such as Architects and Engineers and be able to comprehend and discuss technical aspects of design, providing documentation and detailed drawings/specifications to be used in production.

The record does not establish that such activities are other than incidental to the drafter's duties or that they require an educational level higher than normally associated with drafters, which the *Handbook* indicates to be less than a bachelor's degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

Beyond the decision of the director, the AAO notes that the record of proceeding lacks an official transcript of coursework and an evaluation of the U.S. equivalency of that coursework so as to establish the beneficiary's qualification to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). For this reason also, the petition must be denied.

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. Accordingly, the appeal will be dismissed.

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