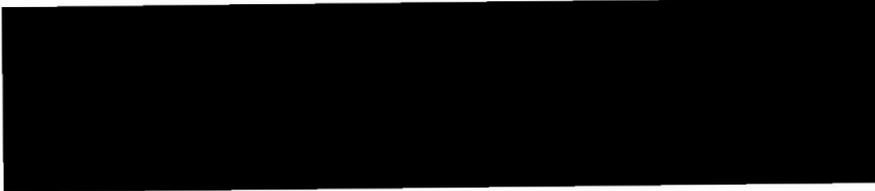




U.S. Citizenship
and Immigration
Services

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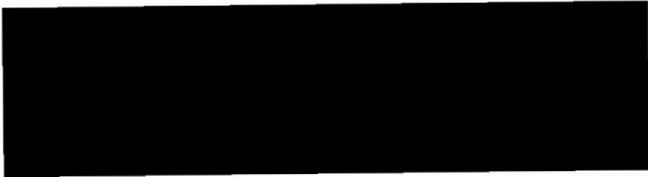
FILE: SRC 04 171 51022 Office: TEXAS SERVICE CENTER Date: JUN 28 2006

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 director of the Texas 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 operates nine restaurants and one centralized commissary kitchen and seeks to employ the beneficiary as a construction/special projects manager 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 position is not a specialty occupation. On appeal, counsel submits a brief and additional documents.

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 field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation including the petitioner's support letter, the beneficiary's educational credentials, and information regarding the petitioner's viability; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B with accompanying brief and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a construction/special projects manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that entail pre-planning and researching the restaurants' needs and objectives; supervising bids and negotiating with contractors; anticipating project costs; researching all applicable codes, investigating the site conditions, and checking availability and local installation of unusual materials; verifying the capacity and condition of existing utilities; researching and providing the petitioner with all of the cost implications and risks associated with equipment changes including the cost of changing the fire protection system and utilities; anticipating all project costs related to completing a project such as the cost of materials, furnishings and equipment, cost of delivery, installation and taxes, design and engineering fees, contractor's overhead and permits, insurance, etc; and complying with building and landscaping codes, electrical and plumbing needs, kitchen ventilation codes, parking requirements, and new handicap codes under the Americans with Disabilities Act. The petitioner stated that the job duties require the beneficiary to have a bachelor's degree.

The director found that the proposed position was that of a construction manager, 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, the petitioner asserts that the proposed position qualifies as a specialty occupation under the first alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because it is an industry standard to require a bachelor's degree for this position and under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the nature and duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or higher.

The petitioner need only satisfy one of the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Upon a thorough review of the record, the AAO concludes that the petitioner has established that the proposed position meets the criterion outlined in 8 C.F.R. §214.2(h)(4)(iii)(A)(4).

The petitioner provided contracts, architectural plans, and invoices documenting a multiple, large-scale remodeling and construction effort totaling \$1.5 million. The January 25, 2005 payment application from a contractor listed charges for demolition, asphalt repairs, finish carpentry, structural steel, acoustical ceiling installation, plumbing and electrical work, and concrete cutting. The November 29, 2004 contract reflects an agreement with an architect for several architectural plans including drawings for restroom plans, panel schedules, and a floor plan/reflected ceiling. Two other contracts establish plans to add sushi and liquor bars to several restaurants and to remodel their bathrooms.

The evidentiary record reveals that the beneficiary must understand design, construction methods, value analysis, cost estimating, contract administration, codes and engineering sciences. The knowledge to perform the duties of the proposed position is usually associated with the attainment of a bachelor's or higher degree in construction management, construction science, or a related field.

As related in the discussion above, the petitioner has established that the specialty position is a specialty occupation.

The director did not comment on the beneficiary's qualifications to perform the duties of the proposed position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The evidence of record establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in civil engineering. As this is a degree directly related to the pertinent specialty occupation,

the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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 petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.