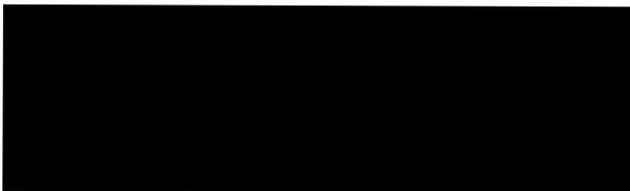


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Dz

FILE: WAC 07 063 52734 Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2008

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:



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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 provides designs of detailed drawings for steel structures. It seeks to extend the employment of the beneficiary as a steel structural detailer. Accordingly, 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).

On September 13, 2007, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that given the complexities of the duties involved in the position, the petitioner requires the minimum of a bachelor's degree and that the position qualifies as a specialty occupation under the regulations at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) and (4).

The record includes: (1) the Form I-129 filed December 26, 2006 and supporting documentation; (2) the director's March 19, 2007 request for evidence (RFE); (3) prior counsel's June 6, 2007 response to the director's RFE; (4) the director's September 13, 2007 denial decision; and, (5) the Form I-290B, counsel's brief, and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a steel structural detailer. In a December 19, 2006 letter appended to the Form I-129 petition, the petitioner provided the requirements, duties, and responsibilities of the proffered position as:

Drafts detailed construction drawings and specifications for planning and construction/fabrication of steel structures for different engineering projects. Drafts detailed drawings of structures and installations. Prepares plans and shop detailed drawings for steel structures and structural elements for fabrication and manufacturing. Must have a bachelor's of science in architecture or civil engineering. Knowledge and experience with the metric system is required.

On March 19, 2007, the director requested, among other items, additional evidence demonstrating that the proffered position is a specialty occupation. In a June 6, 2007 response, counsel for the petitioner noted that the petitioner's two prior petitions for the beneficiary's H-1B status had been approved and submitted the approval notices. Counsel also noted that the petitioner's labor certification, Form ETA-750, is a different position than the petitioner's Form I-129 temporary position.¹

¹ The petitioner explained in a letter attached as exhibit 16 to the petitioner's response to the RFE that it had filed this Form I-129 petition, and two prior Forms I-129, requesting the beneficiary's services as an architect in designing and calculating steel structures. The petitioner noted that it had also filed a Labor Condition Application, Form ETA 750, on behalf of the beneficiary seeking a permanent position of architectural drafter, a position that only required an associate degree in architecture or its equivalent. The petitioner indicated that the Form 750 position was different from the Form I-129 position as the petitioner was shifting its work to the Philippines and the more complex structural designs and calculations would be done in the Philippines in the future.

On September 13, 2007, the director denied the petition. The director observed that the petitioner's description of the proffered position corresponded with that of the Department of Labor's 2006-2007 *Occupational Outlook Handbook (Handbook)* description of an architectural drafter. The director also noted the *Handbook's* discussion of the educational requirements for an architectural drafter:

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

The director found that the *Handbook* did not report that a baccalaureate degree or higher is necessary for the position of architectural drafter. The director determined that the petitioner had not provided any evidence demonstrating: that a degree requirement is common to the industry in parallel positions among similar organizations; that the position involved complex or unique duties that only an individual with a degree in a specific discipline could perform; that the petitioner normally required a degree or its equivalent in a specific specialty for the position; or that the nature of the 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. The director concluded that the described position is not a specialty occupation within the meaning of the regulations.

On appeal, counsel for the petitioner asserts that given the complexities of the duties involved in the position, the petitioner requires the minimum of a bachelor's degree and that the position qualifies as a specialty occupation under the regulations at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) and (4). Counsel provides the following list of the job duties and responsibilities of the proffered position:

1. Interpreting architectural and structural contract drawings and specifications, reviewing and analyzing plans to determine the required structural steel components. (Steel beams and columns, frames and other miscellaneous items)
2. Establishing drawing setup procedures applicable to the job, conceptualizing plans, details and sections to accurately convey construction or fabrication requirements[.]
3. Preparing simple to moderately complex erection drawings and fabrication details of structural components using customer structural and architectural drawings and specifications; producing clear, concise, and complete drawings with all information needed for the checker, fabricator and erector[.]
4. Incorporate elevations, sections, plans, bending details, placing lists, installation details and material lists in a clear and concise manner that can be easily read and interpreted by project customer, engineer or architect and erector.
5. Performing and recording various mathematical calculations and equations using charts, graphs, hand-held calculators, and conventional and CAD system computer software programs [.]
6. Create material lists and orders for accessory items in accordance with the project erection sequence and schedule; preparing run-in orders to accommodate customer requests, revisions

- or errors[.]
7. Coordinating project-detailing activities with fabrication department personnel to insure on-time delivery to customer site locations in accordance with project delivery schedule and contract specifications[.]
 8. Communicate with customers regarding project specifications involving detailing, fabrication and delivery issues; answering customer questions related to assigned projects and resolving any problems that may occur. Coordinate with other suppliers or sub-contractors to ensure that the required frames or supports are as per their design and specifications.
 9. Making revisions to erection or shop drawings at the request of project customer, contractor, engineer, architect, or department supervisor and following up to obtain needed information or to resolve discrepancies in plan sections, dimensions, etc. Updating approval drawings, investigating and incorporating customer/architect/engineer notations, and returning to customer[.]
 10. Performing special projects and completing all other duties as assigned or requested for the general support of the organization.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations to assist in determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. In the instant matter, as the director noted, the petitioner's description of the duties of its proffered position corresponds to a position of an architectural drafter. In the section on *Drafters*, the *Handbook* reports:

Drafters prepare technical drawings and plans, which are used 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.

In the past, drafters sat at drawing boards and used pencils, pens, compasses, protractors, triangles, and other drafting devices to prepare a drawing by hand. Now, most drafters use Computer Aided Design and Drafting (CADD) systems to prepare drawings. Consequently, some drafters may be referred to as *CADD operators*.

* * *

Drafters' drawings provide visual guidelines and show how to construct a product or structure. Drawings include technical details and specify dimensions, materials, and procedures. Drafters fill in technical details using drawings, rough sketches, specifications, and calculations 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 understanding of engineering and manufacturing theory and standards to draw the parts of a machine; they 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.

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.

The petitioner's initial description of the duties of the proffered position is general and corresponds to the description in the *Handbook* regarding a drafting occupation. Likewise, the list of responsibilities submitted on appeal, although expanding upon the initial description, does not establish that the position is other than that of an architectural drafter. As the director found, the *Handbook* reports that most employers prefer applicants who have completed post-secondary school training in drafting, training which is offered by technical institutes, community colleges, and some 4-year colleges and universities. The petitioner has not established that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the position of architectural drafter, the position described by the petitioner. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. As the director observed, the petitioner has not provided any evidence of an industry-wide educational standard for parallel positions among similar organizations. Neither has the petitioner provided documentary evidence that the occupation is distinguishable, by its unique nature or complexity, from similar but non-degree-requiring positions. The record is simply deficient in this regard. The AAO again acknowledges the expanded list of duties and responsibilities submitted on appeal. However, neither counsel nor the petitioner has identified duties that are more complex or unique duties than those of an architectural drafter. Although providing the detail regarding the duties of the proffered position is helpful in understanding the position, simply listing additional duties that do not incorporate complex and unique elements does not establish the position as a specialty occupation. The petitioner does not explain how the duties described on appeal would require a higher degree of education so that only an individual with a bachelor's degree in a specific discipline could perform them. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The petitioner has not established either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner in this matter asserts that it requires the individual in the proffered position to have a bachelor's degree in architecture, civil or mechanical engineering. The AAO routinely reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas in order to understand the petitioner's requirements for a particular position. In this matter the petitioner has not provided evidence that it employs or has employed individuals, other than the beneficiary, in the proffered position.

Although the record contains evidence that the beneficiary was previously approved for H-1B status on the basis of a petition filed by the same petitioner, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the petitioner's qualifications. *Texas A&M Univ. v. Upchurch*,

99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When making a determination of statutory eligibility CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. However, if that record contained the same evidence as submitted with this petition, the CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Further, the AAO finds that the petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. *See Defensor v. Meissner*, 201 F. 3d at 384. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. The petitioner in this matter has failed to submit a description or present any documentary evidence that would establish the necessity of the individual in the proffered position to hold a bachelor's degree or higher in a specific discipline. The petitioner's opinion is insufficient to establish a position as a specialty occupation. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the particular position that is the subject of the petition under review, not the occupation, or the industry-wide standard associated with the occupation. However, the petitioner in this matter has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of an architectural drafter. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical architectural drafter. The petitioner does not describe any elements of the position that would require a civil or mechanical engineering degree or a degree in architecture.

The petitioner does not provide evidence or explanation of how the proffered position is distinguishable from that of an architectural drafter. The petitioner has not described particular projects or the requirements of particular clients, or the peculiarities of the work or the petitioner's business sufficient to establish that the proffered position includes specialized and complex elements that require knowledge usually associated with the attainment of a bachelor's degree in a specific discipline. Going on the 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 190 (Reg. Comm. 1972)). The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not established that the proffered position is a specialty occupation.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.

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