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U.S. Citizenship
and Immigration
Services

02



FILE: WAC 07 148 54983 Office: CALIFORNIA SERVICE CENTER Date: **FEB 02 2009**

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting 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 is a full service architectural, interior, structural, mechanical, electrical and civil engineering firm. It seeks to employ the beneficiary as an architectural drafter. The petitioner, therefore, 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 based on a finding that the evidence of record did not establish that the job offered qualified as a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence.

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.

United States Citizenship and Immigration Services (USCIS) interprets 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) Form I-290B, appeal 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 an architectural drafter. According to the petitioner’s letter of support dated March 17, 2007, the beneficiary would perform, in pertinent part, the following duties:

[The beneficiary] will be required to prepare and complete construction drawings and specifications for new construction projects or repair or alter to existing facilities; meet with clients to obtain information about their specific requirements for the job; make field observations and [take] measurements to adapt structure to site; refer to sketches and measurements provided by agency architects and engineers; incorporate electrical and mechanical requirements of the project into structural plan; use mechanical drafting equipment to draw floor plans, site plans, elevations, and section details; prepare plans using Computer Aided Design (CAD) system.

Due to [the beneficiary’s] comprehensive knowledge in architecture, as well as his certifications in the appropriate software, he will be expected to utilize independent judgment and knowledge of construction practices to determine and specify materials and equipment to be used in construction, including all structural members (e.g., joists, studs, rafters), cover and finish materials (e.g., sheathing, siding, roofing, floor covering), electrical layout (wiring, receptacles, and fixtures), plumbing and HVAC systems, and any other special requirements of the project; itemizes materials and computes estimate of their cost; uses various sources to determine labor costs and estimates the total cost for the job.

He will be entrusted to design and prepare complete and accurate working plans, charts, scale drawings and revisions for complex projects, integrating skilled architectural/engineering drafting methods and procedures with the operation and application of AUTOCAD equipment and software. Finalized drawings are based upon architectural sketches, specifications, supporting documents and field measurements and include multiple views of projects, identifying dimensions, angles, curvatures, tolerances, and materials. At the same time [the beneficiary] is required to develop working drawings on existing projects.

In response to the director's request for a more detailed description of the beneficiary's duties in the request for evidence, the petitioner submitted a letter dated August 3, 2007 which included another overview of the proposed duties in list form. The AAO notes that the petitioner indicated that the beneficiary would be working under the supervision of a licensed architect.

The petitioner also submitted Internet job postings for three architectural positions; namely, a senior drafter, a senior drafter, and an architectural designer. In response to the request for evidence, the petitioner also submitted a letter from a California architectural firm attesting to their requirement of a bachelor's degree for architectural employees.

The director noted that he requested evidence that similar types of organizations require bachelor's degrees to perform the requested services. The director noted that although the petitioner provided the Internet job postings listed above, none of them appeared to be businesses similar to the petitioner's business. The director noted that in an analysis of whether a particular position requires a bachelor's degree, USCIS must consider the particular needs of the business. The director cited the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), noting that while a baccalaureate degree is required by some, it is not a minimum requirement to enter the profession. Based on this premise and a careful review of the stated duties, the director found that the petitioner's needs could be met by an individual with less than a baccalaureate degree. The director found that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field. In conclusion, the director determined that the proffered position was not a specialty occupation.

On appeal, counsel states that the proffered position is in fact a specialty occupation. Counsel submits one additional job posting for a senior drafter and two more letters from California architectural firms. In addition, counsel compares the duties of an architectural drafter set forth in the *Handbook* to those of the proffered position, and contends that the director erred by focusing solely on the title of the position and the description in the *Handbook*. Counsel concludes by stating that the degree requirement is common to the industry, and requests approval of the petition.

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 proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by USCIS when determining these criteria 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)).

In determining whether a position qualifies as a specialty occupation, USCIS 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 baccalaureate degree in a specific specialty 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 and educational requirements of particular occupations.

Counsel states that the duties of the proffered position are performed by architectural drafters, and claims that 60% of these duties involve development and architectural detailing. The title of the proffered position is not disputed in this matter.

The petitioner, therefore, fails to establish the first criterion because the *Handbook* states that for architectural drafters, the kind and quality of drafting training programs vary considerably. The *Handbook* indicates that "employers prefer applicants who have also completed training after high school at a technical institute, community college, or 4-year college or university." Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4): that a specific degree requirement is common to the industry in parallel positions among similar organizations or the position is so complex or unique that it can only be performed by a degreed individual. To establish its degree requirement as an industry norm, counsel relies on submitted Internet job postings and letters from various architectural firms throughout the country.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. One deficiency in the postings is that the position titles vary between "senior drafter," "architectural drafter," and "architectural designer." Moreover, two of the companies are based across the country in Georgia and Pennsylvania, thereby minimizing their persuasiveness regarding counsel's assertions. Finally, although the record contains three letters from California-based firms, including [REDACTED], the record contains no detail regarding their size and scope in relation to the petitioner, and are not supported by evidence to support the claims. 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)).

Consequently, the job postings and letters fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): the position is so complex or unique that it can be performed only by an individual with a degree. It finds no evidence in the record that would support such a finding. More specifically, it finds evidence to the contrary. In the response to the request for evidence, the petitioner indicated that the beneficiary would perform the proposed duties “under the supervision of a licensed architect.” In addition, the *Handbook* indicates that:

Entry-level or junior drafters usually do routine work under close supervision. After gaining experience, they may become intermediate drafters and progress to more difficult work with less supervision. At the intermediate level, they may need to exercise more judgment and perform calculations when preparing and modifying drawings. Drafters may eventually advance to senior drafter, designer, or supervisor. Many employers pay for continuing education, and, with appropriate college degrees, drafters may go on to become engineering technicians, engineers, or architects.

Since the nature of the proffered position is one that anticipates ongoing training and study in pursuit of a degree, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. Despite being in business since 1984, the petitioner has not submitted any evidence to demonstrate a past practice of hiring degreed individuals for the proffered position. While the petitioner employs one person who is in possession of a bachelor’s degree in fine arts, the degree does not appear to be related to the proffered position and, moreover, is insufficient by itself to evidence the petitioner’s “normal” educational requirement for this position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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 baccalaureate or higher degree. Once again, the *Handbook* indicates that employers prefer applicants who have also completed training after high school at a technical institute, community college, or 4-year college or university. There is no requirement that a degree be obtained, and the petitioner even admits that the beneficiary, if employed in the proffered position, will work under the supervision of a licensed architect. Finally, as discussed above, it is common in the industry for architectural drafters to initially do routine work under close supervision and ultimately, after gaining experience, become intermediate drafters and progress to more difficult work with less supervision.

Despite counsel's claims, the petitioner has not shown, in relation to its business and the provisions outlined above, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Rather, it appears that an architectural drafter is akin to an apprentice who will learn from experience and mentoring. Again, the *Handbook* reveals that the proffered position is an occupation that does not require a specific baccalaureate degree as a minimum for entry into the occupation. Thus, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on the ground that the proffered position does not qualify as a 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 not sustained that burden.

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