



U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 03 056 52613 Office: NEBRASKA SERVICE CENTER

Date: MAY 16 2005

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:



**PUBLIC COPY**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The acting director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the acting director is withdrawn. The petition is remanded to the director for consideration of the beneficiary's qualifications.

The petitioner is a business engaged in the remanufacturing of diesel components, including fuel pumps, fuel injectors, and water pumps. It seeks to extend its employment of the beneficiary as an electrical engineer. The acting director denied the petition because he determined the petitioner had failed to establish its proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's notice of his intent to deny; (3) the petitioner's responses to the director's notice; (4) the director's denial letter; and (4) Form I-290B, with counsel's brief and request for oral argument. The AAO reviewed the record in its entirety before reaching its decision.

Although the AAO notes that the acting director's denial referenced certain information which he determined might constitute a violation of the beneficiary's nonimmigrant status under section 237(a)(2)(C)(i) of the Immigration and Nationality Act (the Act), that issue is not before the AAO. The sole issue in this proceeding is whether the record establishes the petitioner's proffered position 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

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner seeks the beneficiary's services as an electrical engineer. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's November 15, 2002 letter in support of the Form I-129; and the petitioner's November 29, 2004 response to the director's notice of his intent to deny the petition, which includes a November 15, 2004 memorandum describing the beneficiary's duties and other documents related to the proffered position. As initially described by the petitioner, the beneficiary's employment involves electrical engineering support for manufacturing operations, including the following duties:

- Maintenance of electronic, hydraulic and pneumatic automation systems for production operations;
- Design and installation of electrical and related systems as required;
- Design and installation of control boards (hard wire relays) and PLC's to support manufacturing operations; and
- Programming and troubleshooting of PLCs.

In response to the director's notice of his intent to deny, the petitioner identified specific duties being performed by the beneficiary:

- Maintenance of two hydraulic electrical unit injector test machines, including responsibility for technical electrical troubleshooting analysis and problem solution;
- Participation in an engineering team tasked with generating cost-saving projects;
- Serving as technical liaison between customers and suppliers to ensure design specifications are met;
- Determination of remanufacturing process for electronic engine components -- CAM and ICP sensors; and
- Supervision of three employees providing technical machine and building maintenance.

In his denial, the director discounted the petitioner's description of its employment based on statements made by the beneficiary in a written March 14, 2003 response to a February 20, 2003 interview with U.S. Customs and in a November 26, 2004 affidavit provided as part of the petitioner's response to the director's notice of his intent to deny. In his response to U.S. Customs, the beneficiary stated the following regarding his employment with the petitioner:

I am employed as [a] Maintenance Supervisor in the [REDACTED] [REDACTED] in Franklin, Indiana. In my position I am required to maintain the company's buildings and manufacturing machines . . . . "Report on Exports to Future Light and Ex World Logistics," General 1.1, March 14, 2003.

His statement in the affidavit submitted to the director offered the following description of his employment:

I currently work full time as a Maintenance Supervisor for International Fuel Systems plant of [REDACTED] Franklin, Indiana, on an H-1B visa . . . .

My job as Maintenance Supervisor with International Fuel Systems at [REDACTED] is an engineering position with responsibility for maintaining the buildings, systems and manufacturing machines. My position requires a sophisticated level of understanding and knowledge of electrical engineering. My employer is providing additional information regarding the specific duties and responsibilities for the position. "Affidavit of [REDACTED] Issa," November 26, 2004.

Based on the beneficiary's statements, the director concluded that the beneficiary was not performing as an electrical engineer, as had been indicated by the petitioner. Instead, he found the proffered position to fall within the building and grounds cleaning and maintenance occupations described in the Department of Labor's (DOL) 2002-2003 edition of the *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO routinely relies for information on occupational classifications. He further noted that the petitioner's description of the proffered position's duties – providing electrical engineering support for manufacturing operations – was not work performed by electrical engineers. The AAO does not agree. The record does not establish a basis for the director's conclusions regarding the nature of the proffered position; the *Handbook* does not support his determination regarding the duties of engineers.

The AAO has reviewed the above statements made by the beneficiary with regard to his employment as a maintenance supervisor. Neither provides the director with a basis for concluding that the beneficiary's employment is related to building and grounds cleaning/maintenance or that the petitioner has substantially misrepresented the duties of the proffered position in its H-1B petition. The beneficiary's references to his employment as a maintenance supervisor and to his maintenance responsibilities offer no meaningful description of the proffered position, much less one that conflicts with that provided by the petitioner, which has indicated that a number of duties of its position involve the maintenance of its electrical systems. Instead, it appears that the beneficiary's use of the word "maintenance" in these statements led the director to conclude that his employment involved building and grounds cleaning responsibilities, an interpretation that

appears to rely on a misunderstanding of that term. Accordingly, the AAO finds no reason to conclude that the position's duties are not those described by the petitioner at the time of filing and in response to the director's notice of adverse information.

The AAO has reviewed the duties of the proffered position in relation to the 2004-2005 *Handbook's* discussion of the occupation of engineer. It finds the director's determination regarding those duties – that, as the beneficiary would be required to provide electrical engineering support, including maintenance, the job was not that of an electrical engineer – to be refuted by the *Handbook's* general discussion of the engineering profession at pages 125-126:

Engineers apply the theories and principles of science and mathematics to research and develop economical solutions to technical problems . . . .

In addition to design and development, many engineers work in testing, production, or maintenance. These engineers supervise production in factories, determine the causes of breakdowns, and test manufactured products to maintain quality . . . .

The AAO's review of the petitioner's description of the proffered position's duties has also found it to include responsibilities beyond the electrical maintenance duties identified by the director. It notes that the petitioner has also indicated that the beneficiary would be responsible for the design and installation of electrical and related systems, as well as determining the remanufacturing process for specific electronic engine components. These duties, when combined with the beneficiary's responsibility for identifying and solving manufacturing problems, appear to describe employment that is closely aligned to that of electrical engineers. As indicated by the *Handbook* at page 134:

Electrical and electronics engineers specialize in different areas such as power generation, transmission, and distribution; communications; and electrical equipment manufacturing, or a specialty within one of these areas . . . . Electrical and electronics engineers design new products, write performance requirements and develop maintenance schedules. They also test equipment, solve operating problems, and estimate the time and cost of engineering projects.

Having concluded that the proffered position is that of an electrical engineer, the AAO now turns to the *Handbook* for its discussion as to whether a degree is required to obtain entry-level employment as an engineer. The *Handbook*, at page 126, states:

A bachelor's degree in engineering is required for almost all entry-level engineering jobs. College graduates with a degree in a physical science or mathematics occasionally may qualify for some engineering jobs, especially in specialties in high demand. Most engineering degrees are granted in electrical, electronics, mechanical, or civil engineering. However, engineers trained in one branch may work in related branches.

In that the duties of the proffered position describe the occupation of an electrical engineer and the *Handbook* indicates that those seeking entry-level employment as engineers must hold the minimum of a baccalaureate

degree in engineering or a related field, the AAO finds the petitioner to have established that its proffered position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). It, therefore, withdraws the finding of the director regarding the nature of the position.

The AAO has also reviewed the record before it to determine whether the information contained therein is sufficient to establish the beneficiary's qualifications to perform the duties of the petitioner's proffered position. It concludes that the evidence provided by the petitioner to date does not support a finding that the beneficiary is qualified to perform the duties of a specialty occupation.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In the instant case, the petitioner relies on an educational evaluation from World Education Services (WES), Inc. to prove that the beneficiary is qualified to perform the duties of the proffered position. In submitting the WES evaluation, the petitioner seeks to establish that the beneficiary meets the second criterion noted above -- a foreign degree that is the equivalent of a U.S. baccalaureate degree in the specialty. However, the AAO notes that the WES evaluation identifies the academic record it has reviewed as that of [REDACTED] or [REDACTED] born on September 3, 1961. As the beneficiary's name is [REDACTED] whose date of birth is January 4, 1961, the WES evaluation submitted by the petitioner does not relate to the beneficiary. Therefore, the record provides no evidence regarding the beneficiary's degree equivalency.

Further, a review of the file finds no indication that the beneficiary has been licensed as an engineer by the State of Indiana. Information provided by the State Board of Registration for Professional Engineers indicates that all individuals who work as professional engineers in Indiana must be licensed. Therefore, if the beneficiary is to be found qualified to perform the duties of the proffered position, the petitioner must establish that he holds an unrestricted state license, which authorizes him to fully practice his profession and be immediately engaged in that profession.

Based on this initial review, the AAO remands the instant petition to the director for consideration of the beneficiary's qualifications to perform the duties of the proffered position and to allow the petitioner to address the issues raised by the AAO, as well as any others identified by the director.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications and entry of a new decision that, if adverse to the petitioner, shall be certified to the AAO for review.