

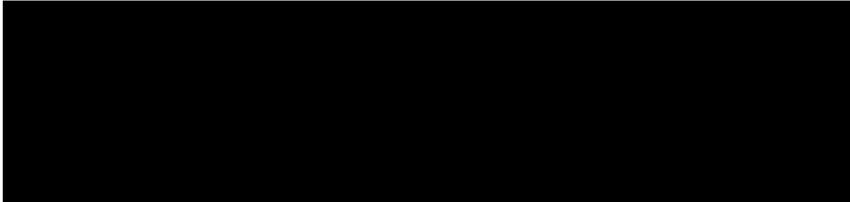
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 162 50421 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be remanded to the director for entry of a new decision consistent with this opinion.

The petitioner is a payroll services company that seeks to employ the beneficiary as an industrial engineer. 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 on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for evidence (RFE); (4) the petitioner's RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a showing that the nature of the specific duties of the proposed position 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.

According to counsel's September 10, 2004 response to the director's request for additional evidence, the duties of the proposed position fall into three broad categories: productivity measurement, systems implementation, and development of auditing systems. Counsel provided additional information regarding each of these categories. For example, under the broad category of productivity measurement, the beneficiary would be required to streamline the accounts management, human resources, billing and accounting, financial services, and benefits components of the petitioner's operations.

On appeal, the petitioner submits further, detailed information regarding the details of the proposed position. These duties appear so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has also submitted an advisory opinion from a professor at Florida Metropolitan University, whose author engaged in a thorough analysis of the duties of the proposed position before concluding that its duties require an individual who has obtained at least a bachelor's degree.

The petitioner has submitted a detailed description of the duties of the proposed position, that, in combination with this particular record's information about the petitioner's business, establishes that the duties of the proposed position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

However, the petition may not be approved at this time, as the record does not indicate that the beneficiary is qualified to perform the duties of an industrial engineering position. According to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource upon which the AAO routinely consults for its information about the duties and educational requirements of particular occupations, "a bachelor's degree in engineering is required for almost all entry-level engineering jobs." The AAO also notes two of the three job postings for industrial engineers submitted by previous counsel require a bachelor's degree in industrial engineering (the third posting does not state the field from which the degree must come). According to an evaluation contained in the record of proceeding, the beneficiary's foreign education is equivalent to a bachelor's degree in industrial design. The record contains no evidence to indicate that such a course of study is equivalent to a degree in engineering.

However, the director did not address this issue. As such, the director's decision will be withdrawn and the matter remanded to the director for entry of a new decision. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the proposed position, which involves industrial engineering. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for

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eligibility. As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's October 21, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.