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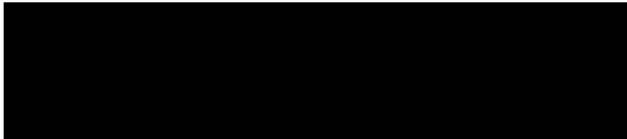
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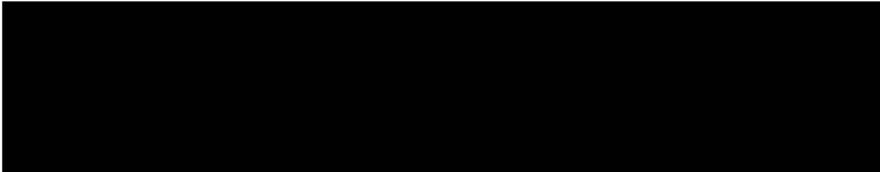
FILE: EAC 06 173 51112 Office: VERMONT SERVICE CENTER Date: **MAR 03 2008**

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, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for the entry of a new decision.

The petitioner provides engineering services. It seeks to employ the beneficiary as a designer engineer. 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 December 22, 2006, the director denied the petition. The director determined that the petitioner had not provided a detailed description of the duties of the proffered position, thus the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner submits a brief and a detailed description of the proposed position.

The record of proceeding includes: (1) the Form I-129 filed May 18, 2006 and supporting documentation; (2) the director's September 11, 2006 request for further evidence (RFE); (3) documents submitted in response to the director's RFE; (4) the director's December 22, 2006 denial letter; and (5) the Form I-290B, counsel's brief, and documents submitted in support of the appeal.

Upon review of the totality of the record, including the detailed description of the proffered position submitted on appeal, the petitioner has established that the proffered position is an engineering position requiring a bachelor's degree in the specific discipline of engineering. The petitioner has established the proffered position is a specialty occupation.

The AAO has also reviewed the record regarding the beneficiary's qualifications. The AAO observes that the beneficiary obtained a bachelor's of science degree in civil engineering from the University of the Philippines that has been evaluated to be the equivalent of a Bachelor's of Science Degree in Civil Engineering from a regionally accredited college or university in the United States. The record establishes that the beneficiary will be working as an engineering intern and is not required to have a professional license in the position; however, to work as an engineering intern, the beneficiary must be certified to have completed an engineering program and have passed a test. No evidence of record indicates that certification is not required in the beneficiary's position. For this reason, the matter will be remanded for the director to determine whether the beneficiary is qualified to perform the services of a specialty occupation and render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's December 22, 2006 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.