



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-00-080-52922

Office: Nebraska Service Center

Date: 21 DEC 2001

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an engineering and material testing business with 17 employees and a gross annual income of \$1,300,000. It seeks to employ the beneficiary as a senior engineer for a period of four years. The director determined the petitioner had not established that the beneficiary has the required license to practice as a professional civil engineer in the State of Illinois.

On appeal, counsel submits a brief.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the beneficiary does not hold an unrestricted license to practice as a civil engineer in the State of Illinois. On appeal, counsel submits copies of the State of Illinois' Professional Engineering Practice Act of 1989 & The Rules for the Administration of the Professional Engineering Practice Act of 1989, and The Structural Engineering Practice Act of 1989 & Rules for the Administration of the Structural Engineering Practice Act of 1989, in support of his claim that the proffered position does not require a license.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

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.

The beneficiary holds a baccalaureate degree in civil engineering conferred by an Indian institution. A credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor's degree in civil engineering from an accredited college or university in the United States.

The record contains a copy of the Illinois Department of Professional Regulation printed in April 1994, indicating that professional and/or structural engineers require a license with the exception of a professional engineer intern enrollment who requires a certificate.

Counsel has submitted copies of The Professional Engineering Practice Act of 1989 & The Rules for the Administration of the Professional Engineering Practice Act of 1989, for the State of Illinois, with parts of the following sections highlighted:

... (b) Nothing in this Act shall prevent:

(1) Employees, including project representatives, of professional engineers lawfully practicing as sole owners, partnerships or corporations under this Act, from acting under the direct supervision of their employers.

(2) The employment of owner's representatives by the owner during the constructing, adding to, or altering of a project, or any parts thereof, provided that such owner's representative shall not have the authority to

deviate from the technical submissions without the prior approval of the professional engineer for the project.

...

(f) "Direct supervision/responsible charge" means work prepared under the control of a licensed professional engineer or that work as to which that professional engineer has detailed professional knowledge.

...

(m) "Professional engineer" means a person licensed under the laws of the State of Illinois to practice professional engineering.

...

(o) "Professional engineering practice" means the consultation on, conception, investigation, evaluation, planning, and design of, and selection of materials and methods to be used in, administration of construction contracts for, or site observation of an engineering system or facility, where such consultation, conception, investigation, evaluation, planning, design, selection, administration, or observation requires extensive knowledge of engineering laws, formulae, materials, practice, and construction methods. A person shall be construed to practice or offer to practice professional engineering, within the meaning and intent of this Act, who practices, or who, by verbal claim, sign, advertisement, letterhead, card, or any other way, is represented to be a professional engineer, or through of the initials "P.E." or the title "engineer" or any of its derivations or some other title implies licensure as a professional engineer, or holds himself out as able to perform any service which is recognized as professional engineering practice.

...

(p) "Project representative" means the professional engineer's representative at the project site who assists in the administration of the construction contract.

Counsel has also submitted a copy of The Structural Engineering Practice Act of 1989 & Rules for the Administration of the Structural Engineering Practice Act of 1989, for the State of Illinois with parts of the following sections highlighted:

...The following persons are exempt from the operation of this Act:

(a) Draftsmen, students, clerks of work, superintendents and other employees of Licensed Structural Engineers when acting under the immediate personal supervision of their employers; and

(b) Superintendents of construction in the pay of the owner when acting under the immediate personal supervision of the Licensed Structural Engineer.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

JOB SCOPE: Supervision, estimation and making of bills and abstract of for the Accurate Engineering & Material Testing, Inc. civil engineering projects.

DUTIES AND RESPONSIBILITIES

* Analyzes reports, maps, drawings, blueprints, tests, and aerial photographs on soil composition, terrain, hydrological characteristics, and other topographical and geologic data to plan and design project;

* Calculates cost and determines feasibility of project based on analysis of collected data, applying knowledge and techniques of engineering, and advanced mathematics;

* Prepares or directs preparation and modification of reports, specifications, plans, construction schedules, environmental impact studies, and designs for project;

* Inspects construction project site to monitor progress and ensure conformance to engineering plans, specifications, and construction and safety standards. May direct construction and maintenance activities at project site.

Although counsel argues that the above Act explicitly states that employees including superintendents, project representatives and other employees of Licensed Structural Engineers are exempted from the Act, the record contains no evidence that the beneficiary will be acting under the immediate personal supervision of an employer who is a licensed structural engineer or under the immediate personal supervision of a licensed structural engineer, as required by Illinois law when performing engineering duties without a State license. As such, the petitioner has not overcome the objections of the director.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.