



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: WAC 99 238 51694 Office: California Service Center Date:

MAR - 7 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:



preventing...
prevent clearly unwarranted
invasion of personal privacy

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.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The petitioner is engaged in research and development, design, and support applications for cable TV network equipment in North America. It seeks to employ the beneficiary as an electronics engineer for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

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 offered position appears to be an engineering management position and, as such, is a specialty occupation. An educational evaluation provided for the record states the beneficiary has the equivalent of 1/2 year of university-level credit from an accredited community college in the United States. This evaluation is based upon the courses in business that the beneficiary completed at Grand MacEwan Community Collage in 1995 in Edmonton, Alberta, Canada. Therefore, the beneficiary is not qualified to work in a specialty occupation in the engineering field based upon his education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. Here, the beneficiary needs twelve years of experience in the specialty occupation to qualify.

Review of the record shows that the beneficiary's following periods of employment qualify toward the required twelve years of experience in the field of engineering.

From 1980 - 1982. As technical manager and operations manager, the beneficiary supervised the construction of four cable TV systems as a consultant. This work included writing technical specifications for the systems and developing contracts for construction and installation of the equipment.

From 1982 - 1988, the beneficiary worked in a series of technical management positions for a firm now named Videon in Edmonton, Canada. His roles included those of engineering manager, chief of construction, chief of commercial, institutes, and apartments, installations manager and branch manager. All of these positions contained engineering elements and dealt with the construction, installation and maintenance of television cable systems.

From March 1988 to November 1995, he was the technical manager for [REDACTED] Edmonton. His role involved engineering aspects including the responsibility of developing and implementing operating standards and procedures, and supervising purchasing and system design.

From June 1996 to September 1997, he worked as an computer assisted design and drafting operator for the rebuilding of a cable system serving [REDACTED] and [REDACTED]. Here, he performed systems design work including drafting and new equipment allocation for areas of [REDACTED].

From September 1997 to September 1999, he worked as a application engineer for [REDACTED] Inc, in Montreal, Canada. This job contained elements of design and engineering, again in the field of cable television systems.

It is determined that at the time the petition was filed, the beneficiary had attained more than the twelve years of qualifying experience in the field of engineering. Therefore, the visa petition may be approved. See: 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

In view of the foregoing, it is concluded that the grounds for denial have been overcome. Consequently, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's decision is withdrawn and the petition is approved.