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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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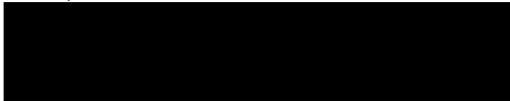


APR 30 2002

File: EAC-01-199-53019 Office: Vermont Service Center

Date:

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further consideration.

The petitioner is a civil and environmental engineering business with 15 employees and an approximate gross annual income of \$1.3 million. It seeks to employ the beneficiary as a surveyor for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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)(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 record shows that the beneficiary received a General Bachelor's degree from the College of [REDACTED] in 1990 after completion of a four-year course of studies. She subsequently graduated from a one-year course in surveying at Centre de Formation Professionnelle des Adultes (C.F.P.A.) and received a diploma as a Technician (Surveyor-Topographer) on April 20, 1995. A credentials evaluation service found the beneficiary's foreign education to be equivalent to a Bachelor of Science degree in Surveying conferred by an accredited institution of higher education in the United States.

The director noted that the beneficiary's course of studies at C.F.P.A. was only a one-year program. The director, therefore, concluded that the petitioner had failed to show that the beneficiary's foreign education is equivalent to a four-year baccalaureate degree in surveying or a closely related field.

On appeal, counsel states that the beneficiary completed a four-year course of general studies at College de [REDACTED] prior to entering C.F.P.A. Counsel asserts that the beneficiary's baccalaureate degree from the College of [REDACTED] in combination with her course work at C.F.P.A. and her work experience as a surveyor, are equivalent to a Bachelor of Arts degree in Surveying. In support of his assertion, counsel submits the beneficiary's transcripts from College of [REDACTED] and C.F.P.A., along with a new credentials evaluation report from [REDACTED] Associate Professor of Computer Information Systems at Zicklin College of Business, Baruch College of The City University of New York.

[REDACTED] states that she is an official who has authority to grant college-level credit for training and/or experience in the field of computer science, engineering, and related fields and that Baruch College is an accredited college which has a program for granting such credit based on an individual's training and/or work

experience. Dr. Ma finds the beneficiary's foreign education to be equivalent to a Bachelor of Science degree in Surveying from an accredited institution of higher learning in the United States. The evaluation appears to be reasonable and will be accepted. Accordingly, it is concluded that the petitioner has overcome the director's objection.

However, according to the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 96, all 50 States and all U.S. territories license land surveyors. Most State licensing boards require that individuals seeking licensure as a surveyor pass a written examination given by the National Council of Examiners for Engineering and Surveying. Most States also require that surveyors pass a written examination prepared by the State licensing board. In addition, they must meet varying standards of formal education and work experience in the field. In this case, the record contains no evidence that the beneficiary is licensed by the State of Massachusetts to work as a surveyor in that State. Therefore, the record, as it is presently constituted, does not show that the beneficiary qualifies to work as a surveyor immediately upon arrival in the United States.

Additionally, the director has not determined whether the proffered position of surveyor qualifies as a specialty occupation. Accordingly, the matter will be remanded to him to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.