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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: EAC-01-215-51676 Office: Vermont Service Center

Date: DEC 13 2002

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: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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 appeal will be dismissed.

The petitioner is an engineering firm with 38 employees and a gross annual income of \$2.5 million. It seeks to employ the beneficiary as an engineer technician for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

Section 214(i)(1) of 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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the petitioner had not persuasively established that the proffered position of engineer technician requires a baccalaureate degree in a specific specialty.

On appeal, the petitioner asserts that the position of engineer technician in Rhode Island engineering practice applies to an individual who has achieved an engineering degree but has not obtained an engineer-in-training (EIT) or professional engineer (PE) certification from the Board of Engineers in the State of Rhode Island. The petitioner states that the position in question

is not an engineering position, and asserts that it does not plan to hire the beneficiary as an engineer.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will train in Computer Aided Design, perform Soils Laboratory Testing, work as a Third Man on a Survey Crew and learn from our Civil Engineers in the following areas of Drainage Design, Individual Sewage Disposal System Design, Environmental Site Investigations and Structural Analysis.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The duties of the proffered position as described by the petitioner on the initial I-129 petition are vague and do not provide a detailed description of the actual day-to-day work the beneficiary will perform. The petitioner has primarily provided a listing of various areas of engineering and engineering design in which the beneficiary will train under the supervision of professional engineers. Nevertheless, the position appears to combine the duties of a civil engineering technician with those of an

environmental engineering technician. In its Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at page 100, the Department of Labor (DOL) describes the job of a civil engineering technician as follows:

Civil engineering technicians help civil engineers plan and build highways, buildings, bridges, dams, wastewater treatment systems, and other structures, and perform related surveys and studies. Some estimate construction costs and specify materials to be used, and some may even prepare drawings or perform land-surveying duties . . .

The DOL describes the job of an environmental engineering technician at page 100 of the Handbook as follows:

Environmental engineering technicians work closely with environmental engineers and scientists in developing methods and devices used in the prevention, control, or correction of environmental hazards. They inspect and maintain equipment affecting air pollution and recycling. Some inspect water and wastewater treatment systems to ensure that pollution control requirements are met.

According to the Handbook at page 101, there is no requirement for a baccalaureate degree in a specific specialty for employment as a civil engineering technician or as an environmental engineering technician. Most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and the Armed Forces.

The petitioner asserts that the position of engineer technician in the State of Rhode Island engineering practice applies to an individual who has achieved an engineering degree but has not obtained EIT or PE certification. In support of this assertion, the petitioner has supplied a copy of the regulation governing the licensure of engineers in the State of Rhode Island. The regulation defines the terms "engineer," "professional engineer," and "engineer-in-training", but does not identify, describe, or discuss the position of "engineer technician." If the petitioner is claiming that the hiring of recent civil engineering graduates as "engineer technicians" is a common practice among engineering firms in the State of Rhode Island, it has not provided any independent evidence to corroborate this assertion. Thus, the petitioner has not shown that the requirement of a baccalaureate degree in the specific specialty of engineering is common to the industry in parallel positions among similar organizations.

The petitioner states on appeal that it currently employs other college graduates with similar titles on the basis that they have

not been certified by the State Board of Engineers. According to a company document contained in the record of proceeding, the petitioner employs 40 individuals, twenty of whom are degreed. The petitioner states that seven of its 20 degreed employees are certified Professional Engineers and six are certified Engineers-in-Training. In response to a Service request for additional evidence, the petitioner provided documents showing the educational credentials and professional registration of 12 of its 20 degreed employees. Six of these 12 degreed employees are registered as Professional Engineers; three are registered as Engineers-in-Training; and one is a registered Professional Land Surveyor. The remaining two degreed individuals are both project managers, and neither is registered as a PE or EIT in the State of Rhode Island. If the petitioner currently employs other "engineer technicians" who have an engineering degree but are not professional engineers or engineers-in-training, it has not provided the names and credentials of such individuals. In view of the foregoing, it is concluded that the petitioner has not submitted sufficient documentation to show that it requires an engineering degree for the proffered position or that it has in the past employed individuals with engineering degrees for "engineer technician" or similar positions.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties 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 in a specific specialty. The duties of the proffered position do not appear to be any more complex than those normally required of a civil engineering technician or an environmental engineering technician. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the normal minimum requirement for employment as an engineering technician.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.

ORDER: The appeal is dismissed.