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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

[Redacted]

File: WAC-01-162-50866 Office: California Service Center

Date: **NOV 25 2002**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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
Robert P. Wiemann, 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 dismissed.

The petitioner is a real estate business with six employees and a stated gross annual income of \$1,560,000. It seeks to extend its authorization to employ the beneficiary as a civil engineer for a period of three years and five months. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement and supporting documentation.

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 determined that the duties of the proffered position did not appear to call for the services of an individual with a baccalaureate degree in civil engineering.

On appeal, counsel asserts that the proffered position is that of a civil engineer and as such requires a baccalaureate degree in civil engineering. Counsel further asserts that the specific duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty.

Counsel's statement on appeal is not persuasive. 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 offered position as follows:

Job includes plan design structural components of engineering projects. Conduct feasibility studies.

Designing and hands-on participation in interior and exterior improvements of commercial real estate projects. The job is forty hours a week and does not require any supervision of others.

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.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in civil engineering or a related field. In its Occupational Outlook Handbook, 2002-2003 edition, at page 109, the Department of Labor describes the job of a civil engineer as follows:

Civil engineers design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. Major specialties within civil engineering are structural, water resources, environmental, construction, transportation, and geotechnical engineering.

Many civil engineers hold supervisory or administrative positions, from supervisor of a construction site to city engineer. Others may work in design, construction, research, and teaching.

Although the petitioner's description of the duties of the position is vague and provides little insight into the beneficiary's actual

day-to-day duties, the duties of the job are clearly not those of a civil engineer. Civil engineers design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. The petitioner in this case is a real estate company engaged in the remodeling of existing buildings, not in the design and construction of new buildings. The beneficiary will not be designing and supervising the construction of new structures, nor will he supervise construction workers at a building site. Rather, he will prepare technical drawings for use in remodeling projects on existing structures and engage in actual hands-on construction work. Civil engineers do not engage in actual hands-on labor at construction sites. It has not been persuasively established that the business in which the beneficiary is to be employed requires the services of a civil engineer.

The proffered position parallels those of a drafter and a construction laborer as those jobs are described in the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition. The Handbook describes the work of a drafter at page 98 as follows:

Drafters prepare technical drawings and plans used by production and construction workers to build. . . . structures such as houses, office buildings, or oil and gas pipelines. Their drawings provide visual guidelines, showing the technical details of the products and structures and specifying dimensions, materials to be used, and procedures and processes to be followed.

Additionally, the Handbook describes the duties of construction workers at page 449 as follows:

Construction laborers perform a wide range of physically demanding tasks involving building and highway construction. . . . Although the term "laborer" implies work that requires relatively low skill or training, many tasks that these workers perform require a fairly high level of training and experience.

Thus, the petitioner has not shown that a baccalaureate degree in civil engineering is a minimum requirement for entry into the occupation.

Second, the petitioner has not shown that the requirement of a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations.

Third, the petitioner has not shown that it required a bachelor's degree in civil engineering as part of the hiring process.

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 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.

Beyond the director's decision, it is noted that the record does not contain sufficient evidence to show that the beneficiary qualifies to perform services in a specialty occupation. 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 this case, full state licensure is required for individuals to practice as civil engineers in the State of California. There is no evidence in the record to show that the beneficiary is licensed to practice as a civil engineer in California. Furthermore, although the credentials evaluator found the beneficiary's foreign education equivalent to a bachelor's degree in civil engineering, the record does not contain copies of any of the documents on which this finding is based such as the beneficiary's diploma and transcripts from Istanbul Technical University in Turkey, nor does the record contain any letters from former employers to corroborate the beneficiary's claimed 19 years of experience as a civil engineer. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.