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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
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Washington, DC 20536



File: EAC 03 003 50560 Office: VERMONT SERVICE CENTER Date: **AUG 22 2003**

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)

ON BEHALF OF PETITIONER:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Maryland engineering firm with 61 employees and a gross annual income of \$2,686,887. It seeks to temporarily employ the beneficiary as an engineering technician for a period of three years. The director determined that the proffered position was not a specialty occupation.

On appeal, counsel clarifies documentation submitted previously and asserts that the position is a specialty occupation because it requires the theoretical and practical application of a body of highly specialized knowledge, namely engineering.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Vermont Service Center on July 20, 2001, the petitioner identified the position as civil engineering technician and described the duties of the proffered position as follows:

Duties include, but are not limited to, applying theory and principles of civil engineering in planning, designing, and overseeing construction and maintenance of structures and facilities under the direction of engineering staff or physical scientists.

On October 8, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities and the percentage of time that the beneficiary would spend performing the specific duties each day. The director also requested a copy of the job posting that the petitioner used to solicit applicants for the proposed position, as well as a list of employees who currently work in positions similar to the proffered position and their academic credentials. Finally the director requested an educational equivalency document that evaluated whether the beneficiary's baccalaureate degree from a Venezuelan university was equivalent to a U.S. baccalaureate degree from an accredited U.S. institution.

In response, the petitioner submitted an educational equivalency document for the beneficiary. In addition, the petitioner broke down the percentage of time that the beneficiary would spend in various duties as follows:

Assist office engineers. 5%

Review project drawings and specifications. 5%

Perform acceptance and field-testing of construction materials. 10%

Evaluate field conditions, design changes and engineers reports. 5%

Apply engineering knowledge to perform field tests and inspections to assure compliance with project plans and specifications. 30%

Prepare reports of field conditions, tests and observations. 5%

Create field sketches of proposed changes or existing conditions. 5%

Use necessary tools and equipment in performing tests such as; slump cone, air meter, soil density gauge, sand cone, level, rules, etc. 5%

Use maps and survey equipment as necessary to locate items of construction or existing site conditions. 5%

Observe the installation of construction materials and report locations, quantities, test results, to office engineer to determine that they conform with the project plans and specifications. 25%

The petitioner also submitted a list of fourteen employees who performed work similar to the proffered position. Of these fourteen employees, nine had bachelor of science degrees with no specific major field of study identified. Of the remaining five employees, one employee had three years of college, another employee had an associate degree and three employees had no baccalaureate degree. In addition the petitioner asserted that most hiring for the engineering technician positions was done by word of mouth and submitted the text of a typical advertisement for the proffered position. This text identified the academic requirements for the position as "engineering degree or six years experience required, certifications a plus."

The petitioner noted that the Department of Labor's (DOL) *Dictionary of Occupational Titles* examined the duties of a civil engineering technician and classified the position with a specific vocational preparation (SVP) rating of seven.

In addition, the petitioner stated:

It is standard practice in our industry to seek recent graduates with engineering degrees for these positions. As individuals gain several years of practical experience or advanced training they would progress to the title of civil engineer. Under certain circumstances it may be possible for an individual to substitute work experience in [sic] for formal education. However, it is best to employ those with a four-year bachelor's degree.

On November 8, 2002, the director denied the petition. The director determined that the DOL's *Occupational Outlook Handbook (Handbook)*

did not find that a bachelor's degree was a clear prerequisite for employment as an engineering technician. The director also noted that, although the petitioner asserted that it was the industry standard to hire recent graduates with engineering degrees for civil engineering technician positions, the petitioner had not submitted any documentary evidence to support this assertion. Finally the director noted that the sample text for the engineering technician position also established that the petitioner did not normally require a degree or its equivalent for the proffered job.

On appeal, counsel submits corrections to its initial information on academic credentials for two employees. The petitioner adds that the beneficiary's duties would include the inspection of high-rise concrete buildings. The petitioner also states: "this type of work requires the education of an engineer as well as specific engineering certificates. The engineering certificates will be obtained by on-the-job experience and training that our company will provide." The petitioner also provided resumes for all fourteen of the employees identified as having duties similar to those of the proffered position.

The petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Both the petitioner and the director refer to the proffered position in the instant petition as an engineering technician. The petitioner more specifically identifies the position as civil engineering technician. The basic duties of civil engineering technicians as outlined in the 2002-2003 edition of the *Handbook* on page 100 are:

Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance.

. . . .

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. Others may set up and monitor instruments used to study traffic conditions.

With regard to training, on page 101, the *Handbook* states:

Although it may be possible to qualify for a few engineering technicians jobs without formal training, 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 division of colleges and universities, public and private vocational-technical schools, and the Armed Forces.

Although the petitioner indicates in the petition that the proffered position requires more experience and academic preparation than the academic requirements outlined in the *Handbook* for engineering technicians, the petitioner provided no further explanation or possible reclassification of the position within *Handbook* categories. It should also be noted that, if the proffered position were classified as engineer, the beneficiary would be found not qualified to perform the duties of the position because he lacks the requisite State of Maryland licensure to fully engage

in the specialty occupation of engineering. 8 C.F.R. § 214.2 (iii)(C)(3).

To the extent that the *Handbook* does not indicate that employers of engineering technicians require a bachelor's degree for entry into the proffered position, it does not appear that a bachelor's degree is the minimum requirement for entry into the civil engineering technician field. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*Handbook*) reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for an engineering technician position were discussed in the previous section, and shall not be repeated here. In its response to the director's request for further evidence, the petitioner asserted that, in the construction industry, it is standard practice to seek recent graduates with engineering degrees for the proffered position, but submitted no documentary evidence, such as job vacancy announcements, to establish this assertion. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In addition, the petitioner submitted no documentation that any professional engineering technician association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the position of a civil engineering technician would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them. For example, the description of the proffered position initially provided by the petitioner contained only generic duties. The petitioner then provided a breakdown of duties based on percentage of time spent on each task. Nevertheless, none of these tasks, without further explanation, documents any particularly unique or complex duties within the construction or civil engineering field. On appeal, the petitioner also mentions that the beneficiary would be involved in the inspection of high-rise concrete buildings; however, no further information is provided to further substantiate or document the complexity or uniqueness of such a job assignment.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The petitioner provided an initial list of its employees who perform work similar to the proffered position and their academic credentials. On appeal, it amends the initial list with regard to the academic credentials of two employees and provides resumes for all fourteen employees. The evidence submitted to date provides minimal probative weight in this proceeding for two reasons. First, although the petitioner states that all employees have a bachelor's degree in engineering or its equivalent, only one resume, that of [REDACTED] states the actual baccalaureate degree that the employee received. According to his resume, Mr. [REDACTED] baccalaureate degree is in building technology. Second, the submission of copies of the actual diplomas obtained by these employees would provide much more probative weight to establish the petitioner's academic requirements for new hires.

Finally, on appeal, the petitioner asserts that the text of its sample job announcement that stated either a bachelor's degree in engineer or six years of experience were needed to be hired for the engineering technician positions, is generic and is actually directed at a range of potential employees and positions. The petitioner's explanation with regard to its sample text for an engineering technician job announcement is not found to be persuasive. Without more persuasive evidence, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

The petitioner provided a breakdown of duties for the proffered position that indicated the beneficiary would spend 65 per cent of his time in three work areas: performing acceptance and field testing of construction materials; applying engineering knowledge to perform field tests and inspections to assure compliance with project plans and specifications; and reporting results of tests and installation of materials to the office engineer to ensure compliance with project plans and specifications. Although, as noted by counsel, the particular duties are very important in the context of the overall integrity of the building construction, none of these areas appears to be so complex or specialized that only an individual with a baccalaureate degree could perform them. The duties as outlined appear similar to many civil engineering technician positions. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.