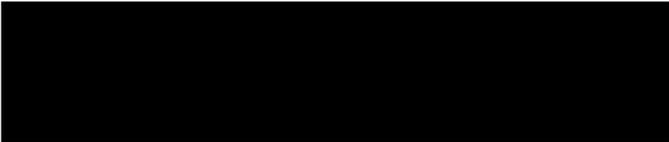


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 27 2005

File: WAC-02-086-52118

Office: CALIFORNIA SERVICE CENTER

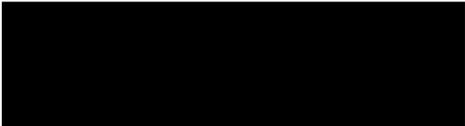
Date:

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)

ON BEHALF OF PETITIONER:



**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

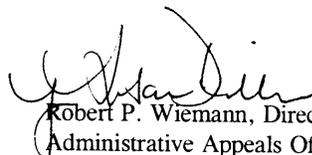
INSTRUCTIONS:

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a civil engineering business with 56 employees and a gross annual income of \$4.9 million. It seeks to employ the beneficiary as an assistant engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, which is primarily that of an engineering technician. On appeal, counsel states, in part, that the proposed duties, which are those of a civil engineer, are so complex that a bachelor's degree in engineering is required. Counsel submits job listings for other assistant engineer positions to demonstrate that such a degree is normally required.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau

considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[P]erforming construction management on various LAN's engineering projects. Assisting in calculating cost and determining feasibility of project[s] based on analysis of collected data, applying knowledge and techniques of engineering, and advanced mathematics. Inspecting construction site to monitor progress and ensure conformance to engineering plans, specifications, and construction and safety [sic] standards. Using computer-assisted engineering and designing software and equipment to prepare engineering and designing document.

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 duties described are not the responsibilities of a civil engineer as set forth in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. Therefore, the Bureau is not persuaded to classify the position as the specialty occupation of a civil engineer.

One of the reasons why the Bureau is not persuaded to classify the offered position as a civil engineer position concerns the particular duties of the offered position compared with the duties of a typical civil engineer position. Counsel asserts that the

proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's (DOL) *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* 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 DOL 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 DOL's *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 DOL has assigned it a specific SVP rating in the *DOT*.

At page 109 of the *Handbook*, the DOL describes a civil engineer position as follows:

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

While the duties described by the petitioner appear to involve some civil engineering related duties, they appear to be primarily those of an engineering technician for reasons that will be discussed herein.

Although the Bureau does not agree with the petitioner that the position it is offering is a civil engineering position, the petitioner could, nevertheless, qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

8 C.F.R. § 214.2(h)(4)(iii)(A).

An analysis of the beneficiary's proposed duties reveals that the job being offered is similar to the job of an engineering technician. According to the DOL at page 100 of the *Handbook*:

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. Their work is more limited in scope and more practically oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control - inspecting products and processes, conducting tests, or collecting data. In manufacturing, they may assist in product design, development, or production. . . .

Engineering technicians who work in research and development build or set up equipment, prepare and conduct experiments, collect data, calculate or record the results, and help engineers or scientists in other ways, such as making prototype versions of newly designed equipment. They also assist in design work, often using computer-aided design equipment.

The beneficiary's proposed job duties, which include "[a]ssisting in calculating cost and determining feasibility of project[s] based on analysis of collected data, applying knowledge and techniques of engineering and advanced mathematics, [i]nspecting construction site to monitor progress and ensure conformance to engineering plans, specifications, and construction and safely [sic] standards," and "[u]sing computer-assisted engineering and designing software and equipment to prepare engineering and

designing document" parallel the job responsibilities of an engineering technician. Information at page 101 of the *Handbook*, finds that most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty is required for the position being offered to the beneficiary.

Additionally, the petitioner has not provided any evidence that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Furthermore, although the record contains various job advertisements, none of the advertisements is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. The petitioner has not demonstrated that the proposed duties described for the proffered position are as complex as those described for the advertised positions. For example, one of the positions is an assistant civil engineer I for a water quality unit, whose duties include preparing studies, reports, designs, and construction plans and specifications for the planning, operation, maintenance, and construction of the district's flood control, water quality, and water production, storage, treatment and distribution facilities and systems. Another position is an assistant civil engineer for a regional transit system, whose duties include providing technical and engineering support in the areas of project planning, design and construction of trackage, systems, stations, facilities, bridges, and other structures for the district's light rail projects and other facility development projects. 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position being offered. For this reason, the petition may not be approved.

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.