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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.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: LIN-01-266-54756 Office: Nebraska Service Center Date:

IN RE: Petitioner:  
Beneficiary:



MAR 19 2003

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**

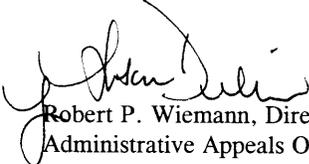
INSTRUCTIONS:

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

The petitioner is a full-service mechanical/sheet metal construction business with 250 employees and a gross annual income of \$32,000,000. It seeks to employ the beneficiary as a chief mechanical estimator for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of 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 the evaluators of the beneficiary's work experience are qualified to evaluate work experience, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). On appeal, counsel states, in part, as follows:

1. The Petitioner provided not one, but two, evaluations by officials who have authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. These evaluations were provided through The Trustforte Corporation, a recognized credential evaluation service, and were issued by [REDACTED] Ph.D., P.E., Professor of Mechanical Engineering at the Pennsylvania State University, and also by [REDACTED]

██████████ Ph.D., Professor of Mechanical Engineering at Ohio State University. Those evaluations clearly meet the criteria set forth in 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

2. Based upon the evaluations by ██████████ Ph.D., P.E., Professor of Mechanical Engineering at the Pennsylvania State University, and also by ██████████ Ph.D., Professor of Mechanical Engineering at Ohio State University, the Petitioner provided ██████████ bachelor's degree equivalency by demonstrating Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation. This evidence meets the criteria set forth in 8 C.F.R. 214.2(h)(4)(iii)(D)(5).

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 beneficiary completed plumbing-related, apprenticeship course work at the Saskatchewan Institute of Applied Science and Technology, and was subsequently certified as a journeyman plumber and licensed as a gas fitter. One academic expert, ██████████ Ph.D., P.E., Professor of Mechanical Engineering at Pennsylvania State University, found that the beneficiary's foreign education satisfied similar requirements to the completion of two years of academic studies toward a bachelor of engineering technology degree from an accredited institution of higher education in the United States. A second academic expert, Professor ██████████

Department of Mechanical Engineering at Ohio State University, found that the beneficiary's foreign education satisfied substantially similar requirements to the completion of two years of academic studies toward a bachelor of science degree from an accredited institution of higher education in the United States. Both academic experts found the beneficiary's foreign education equivalent to an associate-level degree. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The record also indicates that the beneficiary worked from 1990-1995 as an apprentice plumber and pipefitter, 1995-1997 as a foreman supervising the installation of special mechanical systems to suit the needs of a cancer treatment facility, 1997-2000 as an estimator, and from February 2000 until the filing date of the petition on September 17, 2001, as a chief estimator for the petitioner. Such employment is corroborated by letters from the beneficiary's past and present employers, as well as additional letters from professionals who had knowledge of the beneficiary's work. Professor Ray found the beneficiary's foreign education, training, and work experience equivalent to a bachelor of engineering technology degree in mechanical engineering from an accredited institution of higher education in the United States. Professor Parker found the beneficiary's foreign education, training, and work experience equivalent to a bachelor of science degree in mechanical engineering technology from an accredited institution of higher education in the United States. The record also includes a letter dated February 5, 2002, from the Professor and Chair of the Ohio State University Mechanical Engineering Department, confirming that Professor Parker has the authority to grant college level credit for training and experience.

The evaluations appear reasonable and will be accepted. The Department of Labor in its *Occupational Outlook Handbook*, 2002-2003 edition, at page 41, finds that in the construction industry, employers increasingly prefer to hire cost estimators with a degree in building construction, construction management, construction science, engineering, or architecture. Accordingly, it is concluded that the petitioner has shown that the beneficiary qualifies to perform the duties of the proffered position.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.