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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.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: WAC-02-038-51976

Office: CALIFORNIA SERVICE CENTER

Date: MAY 12 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:



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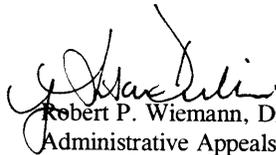
INSTRUCTIONS:

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

The petitioner provides engineering, auditing, and management services to the construction industry. It has three employees and a gross annual income of \$300,000. It seeks to temporarily employ the beneficiary as a civil engineer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel submits a brief.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director further found that the proffered position appears to be that of a cost estimator rather than a civil engineer. On appeal, counsel states, in part, that the Department of Labor (DOL) in its *Occupational Outlook Handbook (Handbook)* and in its *Occupational Information Network (O*Net)*

finds that a baccalaureate degree is the minimum requirement for a cost estimator position in the construction industry.

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:

- Analyze survey reports, maps, drawings, blueprints, aerial photography, and other topographical & geological data to plan projects.
- Explain methods to be used to build the projects[.]
- Estimate quantities and cost of materials, equipment, and labor to determine project feasibility[.]
- Compute load & grade requirements and material stress factors to determine design specifications[.]
- Participate in field observations[.]
- Provide technical advice regarding design, construction, program modifications and structural repairs[.]
- Utilize computer design tools, AutoCAD, Excel, [and] Word[.]

In response to the director's request for additional information, the petitioner's counsel stated, in part, as follows:

UCIC Consultants states that they do not provide engineering services which would require a licensed engineer as they do not design nor review designs for facilities that will be used by the public. Nor do they "Sign off" on blueprints.

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 Bureau 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. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific Job Zone rating in the DOL's *O*Net*. The *O*Net*, however, provides 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 Job Zone rating in the *O*Net*.

The proffered position is similar to that of a cost estimator. Although the *Handbook*, 2002-2003 edition, at page 41, finds that employers in the construction industry increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture, such a preference is not an industry-wide requirement of a baccalaureate degree or its equivalent. The *Handbook* also notes that most construction estimators also have considerable construction experience gained through work in the industry, internships, or cooperative education programs. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the record contains a list of 12 previous "entry level engineers," the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as civil engineering, for the offered position. It is noted that the petitioner did not identify the educational levels of these 12 individuals. Simply 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).

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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.

Counsel has provided a letter from an individual involved in the construction industry. He states that his company requires that its estimators hold a baccalaureate degree in engineering or its equivalent. One letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of his assertions. In addition, he has not indicated the number or percentage of estimators who hold such degrees.

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.