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U.S. Citizenship
and Immigration
Services

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DA

DEC 29 2004

FILE: LIN 02 296 51353 Office: NEBRASKA 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner, a corporation engaged in international business, seeks to hire the beneficiary as a Senior Curriculum Developer for the Humanitarian Demining Operations (HDO) course at the Department of Defense's Humanitarian Demining Training Center (HDTC), Fort Leonard Wood, Missouri. To employ the beneficiary, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition on two grounds: (1) the proffered position is not a specialty occupation and, (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a letter and documentary evidence.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's letter on appeal with its attached documents. The AAO reviewed the record in its entirety before issuing its decision.

For reasons discussed below, the AAO has determined that, based on the circumstances conveyed in the record of this particular proceeding, the petitioner has met the specialty occupation requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) and the beneficiary qualification requirements set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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)(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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner has contracted with the Department of State to fill the position in question in accordance with an “IMAS Program” Task Order entitled “Humanitarian Demining Operations Instructional Support Services.” The Task Order specifies three required tasks:

TASK 1: Instruction: Provide primary instruction for the HDO course in both classroom and field environments.

TASK 2: Training Development: Develop training, as necessary, to update and revise the HDO Course Program of instruction, lesson plans, training support packages and other training and support documents. Assist in transforming existing training materials into acceptable formats to support distance learning requirements.

TASK 3: Subject Matter Expert Support: Provide subject matter expert support to HDTC customers and represent HDTC at meetings and conferences as appropriate.

The following are material aspects that the record reveals about the proffered position and its duties. The HDTC mission is to train individuals “who are deployed around the world to train others in international demining techniques.” The beneficiary would augment an HDTC staff that is already teaching the HDO subject, once or twice a month, as a two-week course. According to the petitioner, approximately 80 percent of the beneficiary’s work would be devoted to “instructional support directly related to his management and operational unique skills in support of humanitarian demining, landmine clearing, and associated tasks,” and the remainder would involve “training development for future curriculums,” providing “his subject matter expertise and support to HDTC customers,” and serving as a professional representative of HDTC at meetings and conferences as appropriate.” From the statement of preferred qualifications in the Task Order, it can be deduced that the instruction would include demining surveys, mine clearing operations, related data base management, quality assurance/control, accident investigation, explosive ordnance disposal, and mine risk-reduction education.

A fair assessment of the evidence is that the proffered position requires knowledge in a variety of areas peculiar to humanitarian demining, including mine clearing techniques, implementation of peacetime mine clearing operations in foreign areas, management of such operations, and training of foreign indigenous personnel in mine clearing.

In his letter supporting the petition, the director of HDTC stated that the proffered position “requires demining experience that is commensurate with a baccalaureate degree or higher and no such degree exists in this field.” Furthermore, the thrust of a letter from the director of the Mine Action Information Center at James Madison University is that the beneficiary has attained specialized knowledge of landmine in

remediation and would merit a bachelor's degree with a landmine remediation concentration if one were yet available.

The AAO has determined that the record has established that the proffered position satisfies the provision at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) for qualifying a position whose specific duties are so specialized and complex as to require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, which here is humanitarian demining. Therefore, the petitioner has established that the proffered position is a specialty occupation.

As discussed below, the petitioner has also established that the beneficiary is qualified to serve in the pertinent specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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 record contains evidence relevant only to subsection 4 of the cited regulation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), to equate the beneficiary's credentials to a United States baccalaureate or higher degree by application of section 4, there must be one or more of the following:

- (1) An evaluation from an official who has 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;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Only subsection 5 of the cited regulation is pertinent to the evidence in this proceeding. This provision allows CIS to determine whether the beneficiary has attained the equivalent of the specialty occupation's required degree in a specific specialty through a combination of (1) education, specialized training, and/or work experience in areas related to the specialty; and (2) specific types of recognition of expertise in the specialty occupation.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The totality of the record of this particular proceeding, in part, indicates that: a college-level course of studies leading to a specialized degree in landmine remediation is merited but has not yet developed; therefore, specifically degreed individuals are not yet available in the workplace; the director's decision determined that "the beneficiary possesses a unique knowledge in landmine clearance technology based on his 20+ years of experience in the specialized field"; and the director of the Mine Action Information Center at James Madison University asserted that the beneficiary is a "Subject Matter Expert" in global landmine remediation, and also that the beneficiary has attained sufficient specialized knowledge in landmine remediation to merit a bachelor's degree with a landmine remediation concentration if one were yet available. The AAO finds that the record supports the finding that the beneficiary is qualified to perform the duties of the specialty occupation. The evidence of record indicates that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required in the occupation; that his experience was gained while working with peers, superiors or subordinates with expertise in the field; and that his expertise has been recognized by at least two authorities in the field.

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. The petition shall be approved.

ORDER: The appeal is sustained. The petition is approved.