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U.S. Citizenship  
and Immigration  
Services



FILE: SRC 03 230 51369 Office: TEXAS SERVICE CENTER Date: **NOV 20 2004**

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:



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

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prevent clearly unwarranted  
invasion of personal privacy**

**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 dismissed. The petition will be denied.

The petitioner is a manufacturer of custom cabinetry for the home and business that seeks to employ the beneficiary as an industrial engineer. The petitioner endeavors to classify the beneficiary 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 because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and  
(ii) 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, 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by 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.

The offered position is essentially that of an industrial engineer. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. Graduates of four-year engineering technology programs may get jobs similar to those obtained by graduates with a bachelor's degree in engineering. Engineering technology graduates, however, are not qualified to register as professional engineers under the same terms as graduates with degrees in engineering. Licensing is required in the District of Columbia and all 50 States for engineers who offer their services to the general public. Some employers regard technology program graduates as having skills between those of a technician and an engineering graduate.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In support of this assertion, the petitioner submitted two educational/experiential evaluations: (1) ██████████ College of Arts & Sciences, Winthrop University – ██████████ opined that the beneficiary possessed the equivalent of a Bachelor of Science degree in Woodworking Technology based upon the beneficiary's successful completion of a three year apprenticeship program and passage of a journeyman exam under the German educational system, twelve

years of professional work experience, and successful completion of six advanced training courses in the industry; and (2) [REDACTED] an evaluator with Multinational Education & Information Services, Inc. - [REDACTED] states that the beneficiary's prior education, training, and work experience are equivalent to a bachelor's degree in Engineering (Woodworking Technology) from an accredited university in the United States. Neither evaluation, however, is sufficient to establish the beneficiary's educational equivalency. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(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, may, based on an individual's training and/or work experience, determine that the individual has 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 has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. In this instance, the record does not establish that either evaluator is "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." To comply with this regulatory criterion, the record must establish that the evaluation is from an individual employed by a university which has a program for granting the requisite credit in the particular specialty. The record must also contain a statement from the university that the evaluator has authority, at that university, to grant the requisite credit in the subject specialty. The record does not establish that either evaluator satisfies either of these criteria. The evaluations are, therefore, of little evidentiary value.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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 occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (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 documentation recounting the beneficiary's work experience is quite detailed and sufficient to establish that the beneficiary's training and/or experience involved the theoretical and practical application of a body of highly specialized knowledge required by the specialty. The record, however, is insufficient in detail to determine that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. The beneficiary's former employer, Lanzet, states that the beneficiary gained his expertise, at least in part, by working alongside other engineering professionals, and that he in fact supervised a team of engineers for a period of seven years. The record does not, however, contain any supporting documentation to establish that assertion such as a list of degreed engineers who worked with and were supervised by the beneficiary along with copies of their degrees. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the record does not establish that the beneficiary has recognition in the specialty under the above cited regulatory criteria. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

It is further noted that there is no evidence of the beneficiary's licensure as an engineer as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). As previously noted, the *Handbook* indicates that licensing is required in all 50 states for engineers who offer their services to the general public. The record does not establish whether the proffered position requires an engineering license, and if so, whether the beneficiary has the requisite license. For this additional reason, the beneficiary may not be qualified to perform the specialty occupation.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.