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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 02 239 53764 Office: CALIFORNIA SERVICE CENTER Date: **OCT 22 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 dismissed. The petition will be denied.

The petitioner is a healthcare facility, and seeks to employ the beneficiary as a project 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 proffered position is not a specialty occupation, and because he was unconvinced that a healthcare facility had a bona fide need for a project engineer. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation, and that the petitioner has a bona fide need for a project engineer.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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 are 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 record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's notice of intent to deny; (3) the petitioner's response to the director's notice of intent to deny; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a project engineer. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's notice of intent to deny. According to this evidence the beneficiary would: assist in the development of detailed project plans; inspect existing facilities to determine compliance with government regulations; prepare reports to management detailing inspections and all necessary federal regulations; assist with the preparation of all regulatory applications to be submitted to all city, county, state, and federal agencies; supervise all contractors retained to perform necessary modifications to and expansion of facilities; prepare recommendations to management including cost analysis, personnel requirements necessary to accomplish modifications, the length of time required to accomplish modifications, and the means of implementing modifications while providing care to the clients; prepare engineering documents and plans necessary to plan modifications and expansions; coordinate all necessary construction requirements with all governmental agencies; supervise all contractors to insure that all improvements are made to the specifications of plans, drawings, and permits; supervise all necessary retrofitting of facilities to comply with code requirements for the provision of care for fully disabled clients, including access to front and rear entrances, toilet and shower facilities, and interior passage ways; review existing fire protection and alarm systems to assure that systems offer the highest standards of protection; develop and maintain all project budgets and verification of the cost incurred; and develop a plan to implement all proposed building modifications and expansions in the context of necessary cost, labor and services required to complete designated projects. The petitioner does not state that a degree in any particular specialty is required for the proffered position. The petitioner does, however, deem the beneficiary qualified to perform the duties of the proffered position by virtue of his foreign degree in electrical engineering which was determined to be equivalent to a bachelor's degree in electrical engineering from an accredited college or university in the United States.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), reports that the industry requires a degree; whether an industry professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest

that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for construction managers. The *Handbook* notes that construction managers plan and coordinate construction projects. Such managers are known by many titles, including: constructors; construction superintendents; general superintendents; project engineers; project managers; general construction managers; or executive construction managers. These individuals manage, coordinate, and supervise the construction process from the conceptual development stage through final construction on a timely and economical basis. Given designs for a particular project, they oversee the organization, scheduling, and implementation of the project to execute those designs. They are responsible for coordinating and managing people, materials, and equipment; budgets, schedules, and contracts; and safety of employees and the general public. Construction managers oversee the completion of all construction in accordance with the engineer’s and architect’s specifications and prevailing building codes. They evaluate and determine appropriate construction methods and cost effective plans and schedules. This may require sophisticated estimating and scheduling techniques and the use of computers with specialized software. They regularly prepare progress reports and meet with owners, other constructors, trade contractors, vendors, architects, engineers, and others to monitor and coordinate all phases of a construction project. These are essentially the duties of the proffered position. The *Handbook* notes that even though degrees are increasingly preferred in the industry, a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has not, therefore, satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner does not assert that a degree requirement is common to the industry in parallel positions among similar organizations, or that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (3).

The duties of the proffered position are routine for project engineers/construction managers on engineering/construction projects in the industry. They are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor are they so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not satisfied the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

It should further be noted that the director denied the petition, in part, because the petitioner had not proved that it needed the services of a full-time project engineer. On appeal, the petitioner submits a letter indicating it is a growing facility with a prospective need for triple the number of beds it currently accommodates. The petitioner provides no support for its assertions. 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). The director cited the *Handbook*, which

indicates that project engineers are employed primarily in the construction trades. The petitioner has failed to overcome the director's objection, and failed to establish that the beneficiary will be coming to the United States to provide services required by the statute at Section 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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 and the appeal shall accordingly be dismissed.

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