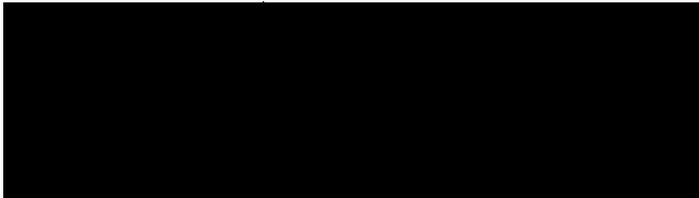




U.S. Citizenship  
and Immigration  
Services

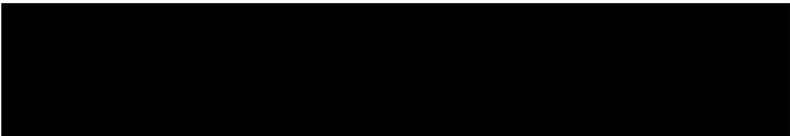


FILE: LIN 03 061 54808 Office: NEBRASKA SERVICE CENTER Date:

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 Director of the Nebraska Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a construction company that seeks to employ the beneficiary as a structural 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(H)(i)(b).

The director denied the petition because he determined that the proffered position did not qualify as a specialty occupation. On appeal, counsel submits a brief and other documentation.

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.

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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a structural engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 10, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing and planning residential and commercial building structures, estimating load requirements and computing size, shape, strength, and type of structural members; inspecting existing projects and recommending repair or replacement of defective members or rebuilding structure; preparing construction schedules; monitoring construction site for progress and ensuring conformance to engineering plans, specifications, and safety standards; and directing construction and maintenance activities at project site. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in civil or construction engineering.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director found the instant position different from that of a civil engineer and comparable to that of a construction manager, a job that does not require a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel agrees that the proffered position includes some duties that pertain to the position of construction manager, but stresses that it also includes more complex duties relating to the position of structural engineer. Counsel points out that the incumbent in the proffered position would monitor and inspect the work of three construction managers, who are directly responsible for work sites, in order to ensure that the building conforms to engineering and safety standards and building codes and specifications. This indicates that the construction managers would be the beneficiary's subordinates. The beneficiary would also be expected to redesign structures and recalculate plans when necessary, responsibilities not performed by construction managers. Counsel also submits photographs of some of the homes the petitioner has recently built.

A thorough review of the evidence on the record, including counsel's explanations on appeal, reveals that the petitioner has demonstrated the first and fourth criteria described above. Therefore, the proffered position is a specialty occupation.

Regarding the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The duties described in the record fall within the *Handbook's* description of the position of civil engineer, which notes that structural engineering is a major specialty under this heading. The *Handbook* indicates that a bachelor's degree in engineering is a prerequisite for entry into almost all engineering positions. The evidence, thus, demonstrates that this criterion has been met.

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the evidence demonstrates that 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. As counsel noted, the proposed duties go beyond those of a construction manager, in that they require the incumbent to design, redesign, and recalculate structural features. The knowledge necessary to perform such duties is associated with obtaining a bachelor's degree in civil engineering; hence, this criterion has been met.

The director determined that the beneficiary, who holds a Russian college degree in construction engineering, was qualified to perform the duties of a specialty occupation. There is an additional issue not addressed however, and that pertains to licensing. With regard to licensure for the H classification, 8 C.F.R. § 214.2(h)(4)(v), states the following:

(A) *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien (except an H-1C nurse) seeking H classification in that occupation must have that license prior to approval of the petition to be found qualified to enter the United States and immediately engage in employment in the occupation.

(B) *Temporary licensure.* If a temporary license is available and the alien is allowed to perform the duties of the occupation without a permanent license, the director shall examine the nature of the duties, the level at which the duties are performed, the degree of supervision received, and any limitations placed on the alien. If an analysis of the facts demonstrates that the alien under supervision is authorized to fully perform the duties of the occupation, H classification may be granted.

(C) *Duties without licensure.* In certain occupations which generally require licensure, a state may allow an individual to fully practice the occupation under the supervision of licensed senior or supervisory personnel in that occupation. In such cases, the director shall examine the nature of the duties and the level at which they are performed. If the facts demonstrate that the alien under supervision could fully perform the duties of the occupation, H classification may be granted.

The state of Illinois requires individuals who practice structural engineering to obtain the appropriate state license. State law provides for an exemption for persons practicing under the direct supervision of a licensed structural engineer. The record contains no information regarding whether the beneficiary possesses an Illinois license to practice structural engineering, or in the alternative, whether the beneficiary would be exempt from the licensure requirement.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of the beneficiary's licensure, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's June 23, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.