

identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

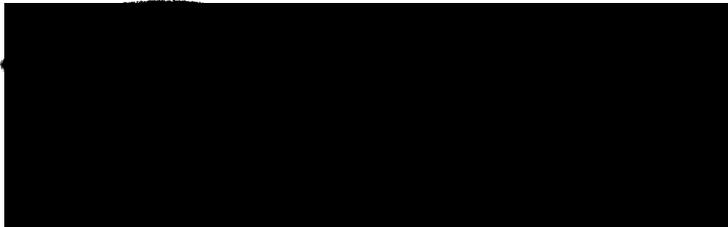
FILE: WAC 04 053 50240 Office: CALIFORNIA SERVICE CENTER Date: AUG 10 2005

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

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The petition is remanded to the director for entry of a new decision.

The petitioner is a consulting engineering and structural design services firm that seeks to employ the beneficiary as an architectural consultant. The petitioner, therefore, 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. On appeal, counsel submits a brief and previously submitted evidence.

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 an architectural consultant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing architectural drawings and monitoring construction. When there is a problem in the design on the blue prints, the beneficiary will review the blue prints and advise modifications. Duties include working with civil engineers, contractors, and subcontractors; applying scientific and mathematical theories and principles to the design and construction of buildings, other structures, and outdoor areas which are aesthetically appealing and safe; utilizing CAD; performing routine design and application requiring the operation of computer-aided equipment; drawing layouts, sections, schematics, and details; completing math computations; investigating and procuring reference materials; digitizing and entering the drawings and specifications; editing, reviewing, and updating changes to existing drawings, and converting circuit drawings to any configuration; analyzing the requirements of projects; preparing designs and reviewing plans and blue prints in accordance with specifications, building codes, design standards, regulations, and specifications. The petitioner stated that the proposed position requires a bachelor of science in architectural engineering.

The director stated that the proposed position resembles a drafter as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that this occupation does not require a bachelor's degree in a specific specialty. The director found that the evidence did not indicate that the petitioner normally requires a baccalaureate degree for the proposed position. The evidence failed to show, the director stated, that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. According to the director, the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, counsel asserts that although an architectural consultant position is not specifically listed in the *Handbook*, the position falls within the *Handbook's* classification of engineer. The *Handbook*, counsel contends, reveals that an engineering position requires a bachelor's degree in a specific specialty. Some of the proposed duties relate to drafting, counsel states, but this does not preclude the primary duties, such as applying scientific and mathematical theories and principles to design and construction of buildings, from requiring knowledge of architecture and engineering. Counsel cites to the submitted job postings to establish that companies require a baccalaureate degree for the proposed position. According to counsel, the petitioner normally requires a bachelor's degree in engineering or a related field for an architectural consultant position. Counsel maintains that baccalaureate-level training is required to perform the duties of the proposed position as they are complex and sophisticated.

Upon review of the record, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires that the petitioner establish that the nature of the specific 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. As described by the petitioner, the proposed duties are so specialized and complex as to require the knowledge that is usually associated with the attainment of a baccalaureate degree in architectural engineering or a related field.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The record contains evidence showing that one of the petitioner's employees is a registered professional engineer in civil engineering, and a letter from this employee stating that California permits a registered engineer to sign and stamp all architectural drawings produced under the engineer's supervision. The record also contains a document describing building design limitations for civil engineers, and a page of the 1994 Uniform Building Code. Collectively this evidence indicates that the beneficiary is not required to possess licensure in order to perform the proposed position.

The petition, however, may not be approved at this time as the evidence contained in the record is insufficient to demonstrate that the beneficiary's bachelor of science degree in architectural engineering is the educational equivalent to a U.S. baccalaureate degree in architectural engineering. The AAO observes that the record contains a translation of the beneficiary's provisional certificate from the Arabic language to the English language. Although the record contains the beneficiary's transcript in the English language, it does not contain the document from which it was translated, which would be in the Arabic language. No educational evaluation of the beneficiary's baccalaureate degree is in the record.

ORDER: The director's March 23, 2004 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.