



U.S. Citizenship
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Services

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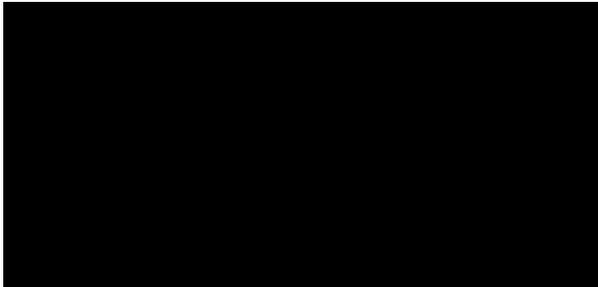
FILE: WAC 05 151 50189 Office: CALIFORNIA SERVICE CENTER Date: DEC 01 2005

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

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 appeal will be sustained. The petition will be approved.

The petitioner provides construction services. It seeks to employ the beneficiary as a drafter. 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 states that the proposed position qualifies as 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.

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 drafter. 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 designing and illustrating concrete framework for the construction of large-scale commercial concrete buildings and structures; and developing and illustrating designs to withstand the forces of liquid concrete. The petitioner seeks to employ the beneficiary who possesses a bachelor's degree in project management for construction from the University of Brighton, a foreign university.

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* discloses that this occupation does not require a bachelor's degree. The director discussed the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), concluding that the petitioner satisfied none of the criteria.

On appeal, counsel cites *Tongatapu Woodcraft Hawaii Ltd. v. Fedman*, 736 F.2nd 1305, 1308 (9th Cir. 1984), and states that the director ignores the submitted evidence and renders a decision that is not based on substantial evidence. Counsel asserts that the proposed position is complex, requiring a baccalaureate degree.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, and based on the evidence in the record, the proposed position is specialized and complex, requiring a baccalaureate degree in an appropriate field such as structural engineering, architecture, or project management for construction. Thus, the petitioner satisfies this criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now address whether the beneficiary is qualified for the proposed position.

The evidence in the record reflects that the beneficiary possesses a baccalaureate degree in project management for construction from the University of Brighton, England. The TrustForte Corporation's educational evaluation, which is contained in the record, shows that this degree is the educational equivalent to a baccalaureate degree in construction management from an accredited U.S. college or university. Accordingly, the beneficiary is qualified for the proposed position.

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

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