

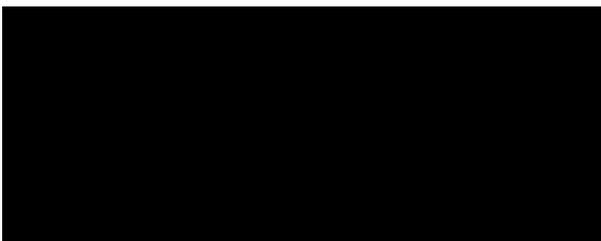


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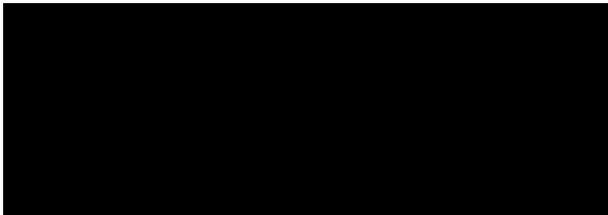
FILE: WAC 02 190 54730 Office: CALIFORNIA SERVICE CENTER Date: **DEC 30 2005**

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner subsequently filed a complaint for declaratory judgment in the U.S. District Court for the Central District of California, and, pursuant to agreement, the matter is again before the AAO on its own motion to reopen. The AAO's previous decision is withdrawn. The appeal will be sustained, and the petition will be approved.

In order to employ the beneficiary as an estimator, the petitioner, a structural steel designer, 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).

In its previous decision in this proceeding, dated February 18, 2005, the AAO upheld the director's dismissal of the petition on the basis that the evidence of record failed to satisfy any of the specialty occupation criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Upon reconsidering the evidence pursuant to its reopening of the proceeding, the AAO has determined that the petitioner has met its burden to establish that the proffered position is a specialty occupation.

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Upon reopening the proceeding and reconsideration of the evidence of record, the AAO has determined that the proffered position is sufficiently complex and specialized to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). This determination is based upon the cumulative weight of: the details that the petitioner presented about the proposed duties; the

information that the petitioner presented about its particular business operations; the academic credentials of the petitioner's experts; the extent of the experts' professional experience in the construction industry and their experience-based knowledge about the type of matters upon which the beneficiary would work; the specific content of the experts' statements; and the particularized information that the experts considered about the specific position and duties that are the subject of this particular proceeding. As the AAO's previous decision was incorrect, it will be withdrawn.

As the evidence of record also establishes that the beneficiary holds the equivalent of U.S. bachelor's degree in architecture, which is a degree directly related to the pertinent specialty occupation, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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. Accordingly, the appeal will be sustained.

**ORDER:** The previous decision of the AAO, dated February 18, 2005, is withdrawn. The appeal is sustained. The petition is approved.