



U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 242 53857 Office: NEBRASKA SERVICE CENTER Date: JUN 13 2005

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:
[Redacted]

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 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 an engineering and architecture firm that seeks to employ the beneficiary as a civil engineering technician. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) 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.

Section 214(i)(1) of the Immigration and Nationality Act (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 documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a civil engineering technician. Evidence of the beneficiary's duties includes the I-129 petition; the petitioner's August 27, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the Form I-129 and the letter of support, the beneficiary would perform duties that entail: performing entry-level land surveyor skills; commissioning; retro-commissioning; energy service evaluation and assessment; energy services modeling and sustainable design; and professional documentation consulting. The petitioner stated that a qualified candidate would possess a bachelor's degree in an engineering-related discipline. In the response to the director's request for evidence, the petitioner stated that the position was an electrical engineering/commissioning technician, and the duties would entail: applying electrical theory and knowledge to draft and execute functional performance tests on electrical/control equipment and instrumentation; conducting extensive site visits to review, research and evaluate various facilities' electrical systems and their capacities; performing technical review and evaluation of electrical equipment submissions, design drawings and operations/maintenance documentation; coordinating communication with client and integrating client quality control and quality assurance systems into legally binding and functionally reasonable construction documentation; managing facility professional meetings; developing meeting agendas and facilitating communication as facility professionals work to implement designs; researching, developing and implementing proprietary quality verification system to ensure compliance with company processes and policies; and troubleshooting and maintaining the network components of proprietary quality verification system using principles of software design and electrical engineering. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in electronics, computer or electrical engineering.

The AAO notes that the labor condition application submitted to the Department of Labor was for a civil engineering technician. The purpose of a request for evidence is to elicit information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). There is a significant change in duties between the initial petition and the response to the director's request for evidence. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). Any evidence that adds duties not described at the time of filing the petition will not be considered. Eligibility must be established at the time of filing; a visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). This appeal will be adjudicated based on the facts initially before the director.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel asserts that a bachelor's degree is normally the minimum requirement for an "engineering technician/electrical engineering/commissioning technician" position. Counsel also states that other identical positions require a bachelor's degree in an engineering-related field for entry into the field. Counsel states that every person who has held a position similar to the proffered position has had a bachelor's degree. Counsel asserts that the expanded position description provided on appeal reflects the specialized and complex nature of the position.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

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 the industry's 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* states: "Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers," and that "most employers prefer to hire someone with at least a 2-year associate degree in engineering technology," for engineering technician positions. The *Handbook* clearly states that a bachelor's degree is not a prerequisite for entry into this field.

The petitioner provided five Internet postings for electrical engineers to establish that a bachelor's degree is a requirement for parallel positions in the petitioner's industry. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for electrical engineers, rather than for civil engineering technicians. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that all of the petitioner's employees in positions similar to the proffered position possess bachelor's degrees. In support of this statement, counsel submits a chart listing 20 employees by gender, position and degree held. This chart gives no names and provides no evidence that the individuals referenced are actually employed by the petitioner, nor does the chart establish that the individuals possess the degrees referenced. In addition, the proffered position is described variously as a civil engineering technician, an electrical engineering technician and an electrical engineering/commissioning technician, and not until the appeal is there any reference to a position titled, "professional intern" or "engineering intern." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

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.

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