

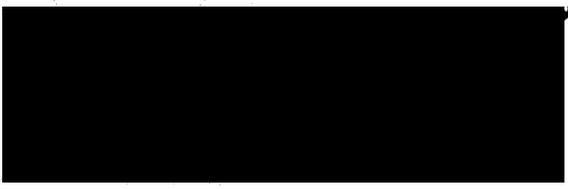
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U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
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U.S. Citizenship
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Services

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DA

MAR 18 2005

FILE: EAC 04 021 51253 Office: VERMONT 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:
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a provider of electrical engineering services. It seeks to employ the petitioner as an electrical engineer and to classify him 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). Electrical engineers have been determined to be a specialty occupation.

The director denied the petition on the ground that the beneficiary was not qualified to perform the services of the specialty occupation. In particular, the director found that the beneficiary did not meet the licensure requirement for H-1B classification in section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), and 8 C.F.R. § 214.2(h)(4)(v).

Section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), provides that an alien seeking temporary employment in a specialty occupation must have “full state licensure to practice in the occupation, if such licensure is required to practice in the occupation.” The licensure requirement is explained in greater detail in the regulations, 8 C.F.R. § 214.2(h)(4)(v), which provide, in pertinent part, as follows:

- A. *General.* If an occupation requires a state or local license for an individual to fully perform the duties of the occupation, an alien . . . seeking H classification in that occupation must have that license prior to approval of the petition to be found eligible to enter the United States and immediately engage in employment in the occupation.
- B. *Temporary licensure*
- 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.

In her decision the director referred to evidence submitted by the petitioner that Maryland, the intended state of employment, requires engineers to be licensed, but also allows an unlicensed engineer to practice as an employee or subordinate of a licensed professional engineer. The director quoted a statement from the petitioner, responding to a request for evidence of the beneficiary’s license status, that “all of the technical personnel employed within our organization are not required to have a license . . . [but that] all tasks will be ratified by licensed personnel.” As pointed out by the director, however, the petitioner failed to furnish any evidence as to who, if any, among its personnel were licensed to practice engineering in the State of Maryland. The director concluded that the record failed to establish that the beneficiary was a licensed engineer or that he was immediately eligible to practice engineering under a licensed professional, as required to qualify for H-1B classification under the Act.

On appeal counsel acknowledged that the beneficiary does not have an engineering license from the State of Maryland, but reiterated that “all tasks performed by the non-licensed engineers are ratified by its

licensed personnel . . . [and] are further ratified by the government inspectors.” Counsel resubmitted the petitioner’s earlier statement on this point and the pertinent provisions of Maryland state law. However, counsel did not identify any employee of the petitioner’s as having an engineering license from the State of Maryland, or submit any documentation on this issue. Simply going on record without supporting documentation does not satisfy the petitioner’s burden of proof. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190, 193-94 (Reg. Comm. 1972).

Thus, the record fails to show that the beneficiary is eligible to practice electrical engineering for the petitioner under the supervision of a licensed engineer, as allowed under Maryland state law and required under section 214(i)(2)(A) of the Act, 8 U.S.C. § 1184(i)(2)(A), and 8 C.F.R. § 214.2(h)(4)(v)(C) for the beneficiary to be qualified for H-1B classification.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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