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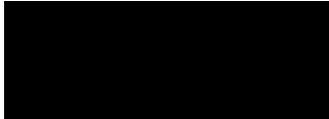
FILE: SRC 05 210 50722 Office: TEXAS SERVICE CENTER Date: **AUG 29 2006**

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 sustained. The petition will be approved.

The petitioner is a surveying company that seeks to employ the beneficiary as a survey engineer and endeavors 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).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position is a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a survey engineer. Evidence of the beneficiary’s duties was set forth in the petitioner’s support letter of July 5, 2005. According to this evidence would:

- Participate in and supervise topographic, pipeline, boundary, right-of-way acquisition, hydrographic, and construction surveys;
- Assist in marketing the petitioner’s services;
- Write proposals and coordinate with clients to determine the type and extent of surveys necessary; and
- Supervise field crews and office personnel.

The petitioner requires a minimum of a bachelor’s degree in surveying engineering for entry into the offered position.

The duties of the offered position will be performed in Texas. Section 1071.251 of the Texas Occupations Code (the Code) provides that a person may not engage in the practice of professional surveying unless the person is registered, licensed, or certified. Section 1071.254 of the Code further provides that an applicant for registration as a registered professional land surveyor must: hold a certificate as a surveyor in training; have at least two years of experience satisfactory to the Texas Board of Professional Land Surveying (the Board) as a surveyor-in-training in performing surveying in delegated responsible charge as a subordinate to a surveyor registered or licensed to engage in the practice of surveying in Texas or another state having registration or licensing requirements equivalent to the requirements of Texas; and, subsequent to January 1, 2003, have earned a bachelor’s degree from an accredited institution of higher education that included at least 32 semester hours in a combination of courses acceptable to the Board in civil engineering, land surveying, mathematics, photogrammetry, forestry, land law, or the physical sciences. Licensing also requires that applicants pass an examination. The beneficiary in this instance will work unsupervised as a licensed surveyor supervising other members of a survey crew. He will be responsible to clients and the general public when determining the type and extent of surveys needed in completion of projects. Under these circumstances, the nature of the specific duties to be performed are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has satisfied the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) and the proffered position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the specialty occupation. The director did comment on this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The petitioner holds a bachelor's degree in surveying engineering from the University of Calgary, and is licensed by the State of Texas to practice professional land surveying. He is therefore, qualified to perform the duties of the proffered position.

CIS records indicate that the beneficiary may be in the United States without inspection and may be ineligible to change status to H-1B. That issue is not within the jurisdiction of the AAO.

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 decision of the director will be withdrawn and the appeal will be sustained.

**ORDER:** The decision of the director is withdrawn and the appeal is sustained. The petition is approved.