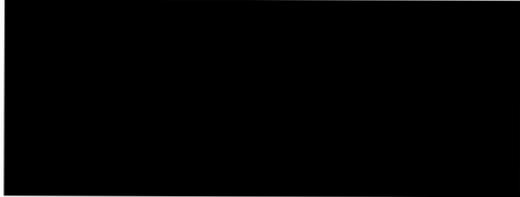


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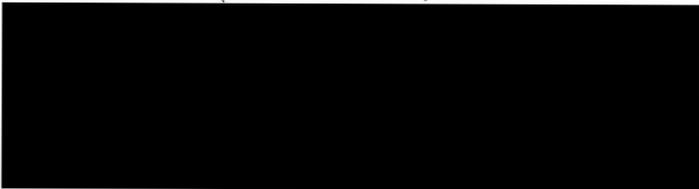
*Dr*

FILE: WAC 04 245 50292 Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 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.

*Robert P. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the California Service Center 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 states that it is a structural engineering company, was established in 2002, has 2 employees, and gross annual income of \$130,000. It seeks to employ the beneficiary as a part-time "Junior Engineer" 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) Form I-290B, and an appeal brief.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

**An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a “junior engineer.”

At the time of filing, as in the appeal, the petitioner stated that the duties of the proffered position would require the beneficiary (under supervision) to perform entry-level engineering and complex technical work. The petitioner specified the job duties to be performed according to the following percentages:

- Measure and obtain design data for projects, compute and check cost estimates, and attend pre-construction and progress meetings; (15%)
- Study and fully understand written specifications, contract drawings and shop drawings in order to access work being performed; (5%)
- Calculate and review areas, numbers and terms specified in contract to ensure limits are met; (5%)
- Audit and approve paperwork necessary for subcontractor payments and correctly assigns a value to additional items not in contract; (10%)
- Oversee and inspect construction and maintenance work on buildings which includes utilities, equipment and controls; (10%)

- Undertake field inspections to examine the workmanship and quality of materials used on construction projects to assure conformance to contract specifications and standard engineering applications; (10%)
- Prepare written correspondence for supervisory approval; (5%)
- Write progress reports and keep accurate daily records of work performed, hours worked, and transactions relating to construction project status; (5%)
- Recommend to supervisor the need for additional work and for modification to project based upon discussion with subcontractors; (10%)
- Do routine drafting and tracing of structures, buildings and facilities; (10%) and
- Prepare engineering sketches and drawings with computer-aided drafting (CAD) and engineering designs by soft desk tools (15%)

The petitioner asserted that the position requires a bachelor's degree in engineering.

The director found that the proffered position was not a specialty occupation because the duties are not so specialized and complex as to require a bachelor's degree in a specific field of study. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director found that the duties of the position were similar to those of a construction manager, a position which does not require a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that a civil/structural engineer position requires a bachelor's degree and points to *Dictionary of Occupational Titles (DOT)*, section on education and training of structural engineers, and the *Handbook's* section on the education and training for civil engineers. With the appeal counsel submitted Internet job advertisements to demonstrate the industry requirement of a related bachelor's degree. On appeal, counsel states that the director erroneously focused on only the duties such as inspecting construction sites, and that the fact that the beneficiary would be performing some of the duties of a construction manager does not take away from the fact that the primary duties are those of a junior civil/structural engineer.

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.

To determine whether the duties just described are those of a specialty occupation, the AAO first considers 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 considered by

the AAO when determining these criteria include: whether the Department of Labor's *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

On appeal, counsel asserts that the proffered position comports with that of a civil or structural engineer. The AAO, however, finds that the evidence of record does not support counsel's contention. Rather, to the extent that they are described in the record, the proposed duties do not exceed those of a civil engineering technician. The 2006-2007 *Handbook's* description of civil engineering technician, at <http://www.bls.gov/oco/ocos112.htm>, 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 application-oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests, or collecting data. In manufacturing, they may assist in product design, development, or production. Although many workers who repair or maintain various types of electrical, electronic, or mechanical equipment are called technicians, these workers are covered in the *Handbook* section on installation, maintenance, and repair occupations.

*Civil engineering technicians* help civil engineers plan and build highways, buildings, bridges, dams, wastewater treatment systems, and other structures, as well as do related research. Some estimate construction costs and specify materials to be used, and some may even prepare drawings or perform land-surveying duties. Others may set up and monitor instruments used to study traffic conditions.

The *Handbook* indicates that such a position does not normally require at least a bachelor's degree in a specific specialty. With respect to the educational qualifications for Civil engineering technicians, the *Handbook* states:

Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is

available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and in the Armed Forces. Persons with college courses in science, engineering, and mathematics may qualify for some positions but may need additional specialized training and experience. Although employers usually do not require engineering technicians to be certified, such certification may provide jobseekers a competitive advantage.

Prospective engineering technicians should take as many high school science and math courses as possible to prepare for postsecondary programs in engineering technology. Most 2-year associate degree programs accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (ABET) require, at a minimum, college algebra and trigonometry and one or two basic science courses. Depending on the specialty, more math or science may be required. About 230 colleges offer ABET-accredited programs in engineering technology.

The type of technical courses required also depends on the specialty. For example, prospective mechanical engineering technicians may take courses in fluid mechanics, thermodynamics, and mechanical design; electrical engineering technicians may need classes in electrical circuits, microprocessors, and digital electronics; and those preparing to work in environmental engineering technology need courses in environmental regulations and safe handling of hazardous materials.

Because many engineering technicians assist in design work, creativity is desirable. Because these workers often are part of a team of engineers and other technicians, good communication skills and the ability to work well with others also are important.

Engineering technicians usually begin by performing routine duties under the close supervision of an experienced technician, technologist, engineer, or scientist. As they gain experience, they are given more difficult assignments with only general supervision. Some engineering technicians eventually become supervisors.

The National Institute for Certification in Engineering Technologies has established a voluntary certification program for engineering technicians. Certification is available at various levels, each level combining a written examination in 1 of about 30 specialties with a certain amount of job-related experience, a supervisory evaluation, and a recommendation.

The *Handbook* does not establish a specific degree requirement for civil engineering technicians. The *Handbook* emphasizes technical training at technical school or two-year colleges, and work experience, and for advancement, varying combinations of experience and education depending on the type of engineering.

The *Handbook* is clear that a bachelor's degree or its equivalent in engineering or other specialty is not the normal minimum requirement for entry into the occupation. Accordingly, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A)(2), that is, by establishing either that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Factors considered by the AAO when determining these criterion include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

Regarding parallel positions in the petitioner's industry, the petitioner submitted 4 Internet job postings for civil/structural engineers. However, as previously the proffered position is that of a civil engineering technician, therefore the four advertisements do not provided a meaningful indication of degree requirements for civil engineering technician positions. Further, the duties of the advertised positions are not specific enough to compare with the job duties of the proffered position. Counsel asserts in the appeal brief that the petitioner's business is similar to the businesses in the advertisements. However, the petitioner provides no information that would establish them as organizations of comparable size and complexity to the petitioner. Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

As already discussed, the *Handbook* indicates that civil engineer technician positions normally do not require a baccalaureate degree or higher, or the equivalent, in a specific specialty.

The record also does not include any submissions from individuals, firms, or professional associations in the industry regarding an industry recruiting and hiring standard.

Therefore, the petitioner has failed to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO also finds that the petitioner has not satisfied the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), in that the evidence of record does not establish that the particular position here proffered is so complex or unique that it can be performed only by a person with at least a baccalaureate degree in a specific specialty.

As reflected in the list of proposed duties copied from the record earlier in this decision, the petitioner has limited its description of those duties to generic and generalized functions that comport with the general duties that the *Handbook* ascribes to the civil engineering technician occupation, which does not require at least a baccalaureate degree in engineering or any other specialty. The AAO is not persuaded by counsel's attempt on appeal to match the generalized duties in the record to the civil engineering occupation in the *Handbook*. To the extent that they described in the record, the duties described for the proffered position do not exceed those that the *Handbook* describes for civil engineering technicians. The record is devoid of any specific details about the duties comprising the proffered position that would distinguish it as unique from or more complex than a civil engineering technician position that can be performed without at least a bachelor's degree in engineering or any other specialty.

As noted above, the petitioner has described duties normally performed by industrial engineering technicians. The AAO finds the petitioner to have provided no evidence that would support a finding that the job duties are so complex or unique that they can be performed only by an individual with a degree in engineering.

Therefore, the record also fails to establish that the position qualifies as a specialty occupation under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree.

For the reasons discussed above, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine the petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In the instant case, counsel has indicated that the proffered position is newly created. Counsel contends, however, that the petitioner would only hire a person with a baccalaureate degree for the position, and has a history of hiring professionals with baccalaureate degrees. However, the petitioner lists only one contractor with an engineering degree, and that person did not serve the position here described. Without

documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the petitioner has not established its position as a specialty occupation under the third criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that a petitioner establish that the nature of the specific duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel contends that the duties of the proffered position satisfy the criterion's requirements.

Counsel stated that the beneficiary will perform duties similar to those of a civil/structural engineer. However, the job description provided does not indicate that the duties of the proffered position are distinguishable from those of a civil engineering technician described in the *Handbook*, which does not indicate that a degree in a specialty is required. The AAO accords little evidentiary weight to the work-product examples pertaining to the civil engineer which it has hired in the past. The record indicates that the referenced civil engineer is licensed to practice as such, but the beneficiary is not. Moreover, the duties listed in the record for the beneficiary do not encompass applications of engineering knowledge normally associated with a degree in engineering.

Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the beneficiary is not qualified to perform the services of a specialty occupation. For this reason also, the petition must be denied. The AAO finds that the record does not contain sufficient documentation to establish that the beneficiary qualifies to perform services in a specialty occupation, as required at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), and 8 C.F.R. § 214.2(h)(4)(iii)(C).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) requires the beneficiary to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

No evidence has been submitted to establish that the beneficiary holds a U.S. degree in the specialty or a foreign degree equivalent to a U.S. degree in the specialty.

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In support of its claim that the beneficiary has the equivalent of a degree, the petitioner submitted a copy of a degree issued to the beneficiary together with official transcripts from Far Eastern University, in Manila, Philippines. The degree certificate states that the beneficiary was issued a Bachelor of Science

degree in Engineering. However, the record does not contain a degree equivalence evaluation. The petitioner has not complied with the regulation at 8 CFR § 214.2(h)(4)(iii)(D). The record does not establish that the foreign degree is the equivalent to a U.S. degree pursuant to 8 CFR § 214.2(h)(4)(iii)(D)(3). The AAO notes that the record does not contain any other information pertaining to the beneficiary qualifications. Therefore, the record does not establish that the beneficiary has completed college level coursework equivalent to a U.S. baccalaureate degree.

The record does not establish that the beneficiary is qualified to perform the services of a specialty occupation, in that he does not have the equivalent of a U.S. baccalaureate degree in the specific specialty that would be pertinent if the proffered position were actually a specialty occupation. For this additional reason, the petition may not be approved.

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.