

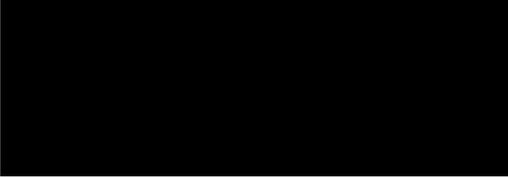


U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 253 51497 Office: CALIFORNIA SERVICE CENTER Date: JAN 30 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.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for a new decision.

The petitioner is a firm specializing in land surveying and civil engineering that seeks to employ the beneficiary as a survey party chief and to classify her 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 on the grounds that the petitioner failed to establish that the proposed position meets the definition of specialty occupation and that the petitioner failed to show that the beneficiary possessed the licensure to practice as a land surveyor. On appeal, the petitioner asserts that it requires a bachelor's degree in surveying for the proposed position and that the beneficiary is properly exempt from the licensure requirement because she is the subordinate of a duly licensed surveyor. The AAO finds that the proposed position is a specialty occupation and that the beneficiary does not require licensure. As discussed below, however, the petition must be remanded to the director for a decision as to whether or not the beneficiary's foreign degree qualifies her to serve in the specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a survey party chief. Evidence of the beneficiary's duties includes counsel's cover letter and the petitioner's support letter attached to the Form I-129, the petitioner's response to the RFE, and the petitioner's brief on appeal. According to this evidence, the beneficiary's duties would include:

- planning the details for specific survey projects;
- interpreting engineering field notes;
- making accurate survey calculations, both manually and using an HP41 calculator;
- having knowledge of techniques of drafting and mapping;
- exercising the ability to understand legal property descriptions, construction drawings, engineering records, and complex maps;
- exercising knowledge of surveying principles, practices and equipment, and mathematics, including trigonometry as applied to land surveying;
- organizing, assigning, directing, reviewing and participating in the work of a survey party in conducting preliminary, location, construction, property, topographic and other precise surveys;
- planning, directing, and managing the training crew members in the performance of difficult survey operations;
- planning, directing, and managing the crew in the proper operation of the transit level, electronic distance measuring instruments, and other survey equipment;
- establishing and maintaining effective work procedures and safety practices for the field crew;
- planning, directing, and managing the instruction and training of assigned staff in work practices and improved methods and procedures;
- developing and implementing computer applications related to survey work;
- recording and submitting field notes on the type of survey, information required, and procedures and equipment used; and
- preparing field books, profiles, and other drawings from field notes and making necessary computations.

The petitioner stated that a candidate for the proposed position must possess a bachelor's degree in surveying and related experience.

The director asked the petitioner to submit a copy of the beneficiary's land surveyor license or a letter from the California Board of Professional Engineers and Land Surveyors stating that the beneficiary's position does not require a license.

In response, the petitioner submitted a letter from the California Board of Professional Engineers and Land Surveyors stating that the Professional Land Surveyor's Act exempts individuals from licensure if they are subordinate to a licensed professional land surveyor or civil engineer authorized to practice land surveying. The Board further stated that the job description submitted by the petitioner for the proposed position met the

requirement for "Exemption to licensure" under the Land Surveyor's Act. The petitioner also submitted a copy of the beneficiary's surveyor's license from New Zealand, and a copy of the Professional Land Surveyor's Act, including the provision for licensure exemption.

The director concluded that the proposed position was not a specialty occupation. The director further concluded that the petitioner failed to provide a copy of the petitioner's license with the response to the RFE and to mention in the initial petition that the beneficiary would work under the supervision of a licensed land surveyor. The director concluded that the petitioner did not provide sufficient detail about the type and amount of supervision the beneficiary would have. As such, the director concluded that the petitioner did not establish that the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, the petitioner submits a copy of its land surveyor license and asserts that the director did not request a copy of the license in the RFE. The petitioner further asserts that it requires a minimum of a bachelor's degree in surveying for the proposed position and that the position is a specialty occupation.

Upon a thorough review of the record, the AAO concludes that the petitioner has established that its survey party chief position is a specialty occupation pursuant to 8 C.F.R. §214.2(h)(4)(iii)(A)(4).

To determine whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Based on a thorough review of the duties of the proposed position alongside the *Handbook's* description of surveyors, cartographers, photogrammetrists, and surveying technicians, the AAO concludes that the proposed position is that of a survey party chief.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree. The evidentiary record establishes that the beneficiary's specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree in surveying or a related field.

The petitioner's informational materials briefly describe its expertise. The petitioner has been in the business of land surveying, planning, and engineering for almost 27 years. It has 54 employees, including a large staff of professional engineers and licensed land surveyors. It uses its six Trimble Global Positioning System (GPS) receivers for surveys and provides geographic information systems (GIS) software services to its clients. The petitioner's staff includes nine registered civil engineers, two petroleum engineers, four design drafters, and five licensed land surveyors. The petitioner also employs a substantial support staff to carry out land surveys. The petitioner has 55 networked computers and uses a spatial database and a relational database as part of its GIS software.

The *Handbook* indicates that surveying is an emerging specialty and that employers are increasingly requiring bachelor's degrees in surveying or related fields, such as civil engineering or forestry (with courses in surveying):

New technology is changing the nature of the work of surveyors and surveying technicians. On larger projects, surveyors are increasingly using the Global Positioning System (GPS), a satellite system that locates points on the earth to a high degree of precision by using radio signals transmitted via satellite. . . . Surveyors must then interpret and check the results produced by the new technology.

Most people prepare for a career as a licensed surveyor by combining postsecondary school courses in surveying with extensive on-the-job training. However, as technology advances, a 4-year college degree is increasingly becoming a pre-requisite. About 50 universities now offer 4-year programs leading to a B.S. degree in surveying. Junior and community colleges, technical institutes, and vocational schools offer 1-, 2-, and 3-year programs for both surveying and surveying technology.

As technologies become more complex, opportunities will be best for surveyors, cartographers, and photogrammetrists who have at least a bachelor's degree and strong technical skills. . . . New technologies such as GPS and GIS, also may enhance employment for surveyors. . . .

The evidentiary record reveals that the beneficiary must be able to manage a survey party in order to complete land surveys. She will need to know how to use new and complex technology such as the petitioner's GPS receivers and to interpret the results produced by those receivers and be familiar with GIS software. The knowledge to perform the duties of the proposed position is usually associated with the attainment of a bachelor's degree in surveying. This position is distinguishable from survey technicians, who assist the party chief by adjusting and operating surveying instruments.

As related in the discussion above, the petitioner has established that, due to the complexity of its duties, the proposed position is a specialty occupation under the fourth criterion of 8 C.F.R. §214.2(h)(4)(iii)(A).

The petition may not be approved however, as the evidence of record does not establish that the beneficiary is qualified to perform services in the proffered position in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As earlier indicated in this decision, licensure is not an issue in light of the specific facts in this particular case. It is also noted that the record establishes that the beneficiary holds a bachelor's degree in surveying from a foreign educational institution, the University of Tago in Dunedin, New Zealand. However, the record does not contain an evaluation of the U.S. educational equivalency of the beneficiary's foreign education, rendered by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials, as required by 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(3).

As CIS had not previously addressed the beneficiary's educational qualifications, the petition will be remanded for the director to issue a request for additional evidence on whether the beneficiary possesses the credentials specified at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The request should specifically note the absence of the aforementioned evaluation, and it should afford the petitioner the opportunity to provide such documentation and any other evidence pertinent to the issue of the beneficiary's qualifications under 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The director may also request any other evidence that he may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory

requirements for eligibility. If the new decision is adverse to the petitioner, the director shall certify it to the AAO for review.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's October 8, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.