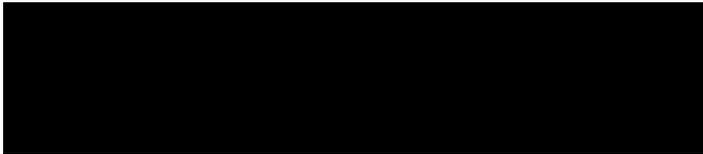


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FILE: WAC 04 079 51582 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2006

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:



**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, 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 dismissed. The petition will be denied.

The petitioner is non-profit medical provider that seeks to employ the beneficiary as a mechanical engineer. The petitioner endeavors to classify the beneficiary 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 the petitioner submits a brief indicating 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 mechanical engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Design utilities and/or vent systems for new hospitals, overseeing and/or approving blue-prints, and identifying and/or creating specifications for systems, while considering local limits, conditions and standards;
- Oversee a team of engineers to construct and install the vent, heat, water, fire, storage, and electrical systems;
- Sign off on the finished product to insure that it meets appropriate government specifications;
- Work under process optimization principals to maximize benefits based on cost, supplies, and timelines; and
- Identify and insure compliance with local codes and regulations for permit process;
- Train and assist in the training of facilities, engineers for hospitals in Russian speaking countries using native language skills.

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

The AAO routinely consults the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be essentially those of a mechanical engineer. The *Handbook* notes that mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work in many industries and may specialize in energy systems, applied mechanics,

automotive design, manufacturing, materials, plant engineering and maintenance, pressure vessels and piping, heating, refrigeration, and air-conditioning systems. They may work in production operations in manufacturing or agriculture, maintenance, or technical sales, and many are administrators or managers. In this instance the petitioner states that the beneficiary will be responsible for all mechanical engineering issues involved in the design and construction of hospitals. The duties to be performed appear to be complex and those that would normally be performed by an engineer, not a construction manager or engineering technician as found by the director. The *Handbook* states that a bachelor's degree is required for almost all entry-level engineering positions. The proffered position, as described, would qualify as a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petition, however, may not be approved. In addition to qualifying the proffered position as a specialty occupation, the petitioner must demonstrate that the qualified nonimmigrant alien is coming temporarily to the United States to perform services in a specialty occupation under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b). This, the petitioner has failed to do.

In response to the director's request for evidence the petitioner stated that the beneficiary's services were being sought to set up a headquarters office in the United States to build hospitals in emerging countries, with responsibility for all mechanical engineering issues. The record, however, contains no documentation to corroborate the petitioner's statement that it is actually involved internationally in the construction of hospitals. The petitioner provided no independent proof establishing that it had ever engaged in the construction of hospitals, nor did it state where any hospitals constructed by it are located. The petitioner did not provide proof of any income or funding which would permit it to provide the services it claims to provide. The petitioner's president states in his letter of January 27, 2004, that the petitioner presently has \$38,000,000 in cash and instruments for its operations, salaries and taxes, and that it expects to receive an additional \$32,000,000 by February 15, 2004. The petitioner did not, however, explain the source of any funding, or provide documentary proof that it did, in fact, have the claimed funds on hand. The petitioner provided no documentation to establish that it has a business plan or contracts to establish offices in the United States. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)).

Based upon the foregoing, the petition must be denied.

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 and the appeal shall accordingly be dismissed.

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