



U.S. Citizenship
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Services

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FILE: LIN 04 800 51895 Office: NEBRASKA SERVICE CENTER Date: JUL 12 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, Chief
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 appeal will be dismissed. The petition will be denied.

The petitioner is a computer software development and consulting company that seeks to employ the beneficiary as a mechanical engineer. The petitioner, therefore, 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 is not a specialty occupation. On appeal, counsel submits a timely appeal.

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 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 and additional evidence. 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; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail the following:

During the build phase: user requirements study and analysis; prepare functional specifications and design; build detailed design specifications and programs; develop design conversion programs; quality assurance testing; and user training.

During the support and maintenance phase: analyze user problems; prepare change drive specifications and design the programs; test the change driven programs; identify the design defects and improve design access.

The petitioner asserts that the proposed position requires a bachelor's degree in mechanical engineering, a master's in mechanical engineering, and/or the equivalent in education or work-related experience.

In denying the petition, the director stated that the petitioner failed to submit documentation corroborating that an "internal" project involving sufficient work at the H-1B level immediately exists for the beneficiary at the location shown on the labor condition application (LCA).

On appeal, counsel submits: the employment agreement entered into between the petitioner and the beneficiary; Form W-2 and pay stubs; bank statements; client agreements; and the petitioner's February 25, 2005 letter.

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.

Counsel contends that the petitioner is working on the ST-ORM project, there are no third-party clients involved in the project, and the petitioner has revenue sources to maintain and support the project. The petitioner's February 25, 2005 letter states that the beneficiary will serve as an in-house computer design engineer for the ST-ORM project.

The AAO finds that the assertions are insufficient in establishing the existence of a specialty occupation in light of the director's specific request for evidence of the proposed position. The petitioner must do more than submit a job description and assert that the position requires a degree in a specific specialty; it must submit evidence supporting its contentions. The submitted evidence provides no factual basis in which to determine the existence of the offered position. The record contains no evidence of the ST-ORM project other than petitioner's and counsel's assertions about the project. No documentation in the record, including the employment agreement entered into between the petitioner and the beneficiary, Form W-2 and pay stubs,

bank statements, and client agreements relate to the ST-ORM project, although the petitioner's February 25, 2005 and January 5, 2004 letters stated "ST-ORM has been used successfully by leading companies in the automotive and aerospace industry." There is no evidence in the record of ST-ORM's use by leading companies. The record therefore lacks sufficient evidence for the AAO to determine the existence of a specialty occupation for which the beneficiary is to occupy. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Consequently, the petitioner fails to demonstrate a factual basis in which to establish the existence of the offered position, and it has not overcome the evidentiary deficiencies identified in the director's decision to deny the petition. For this reason, the petitioner satisfied none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or 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 baccalaureate or higher degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.