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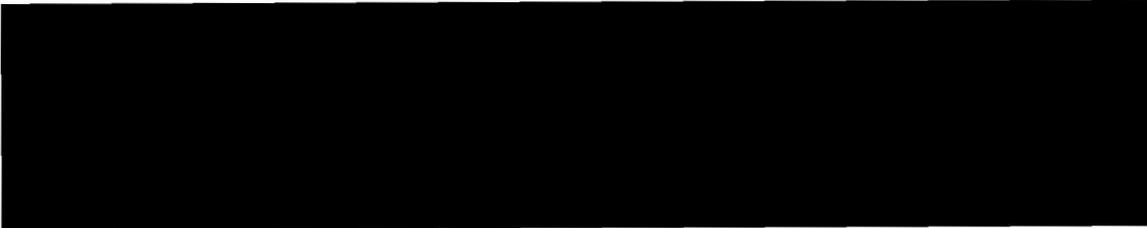
FILE: WAC 04 209 54080 Office: CALIFORNIA SERVICE CENTER Date: **MAR 27 2006**

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. Kelley*  
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 appeal will be sustained. The petition will be approved.

The petitioner is an electrical engineer firm that seeks to employ the beneficiary as an electrical engineer/CAD designer. 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 brief.

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) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an electrical engineer/CAD designer.. 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: developing, computing, and estimating and analyzing specifications, costs and manpower to be used on the electrical requirement of projects, utilizing electrical engineering principles and techniques; reviewing field reports to determine whether installed electrical systems conform with project designs and standards; developing and executing strategic and tactical electrical designs and construction efforts; designing detailed electrical layouts of a power, lighting, data system, public address system, and intrusion and fire alarm system using AutoCAD 2004 and preparing design layouts of a single line diagram and a riser diagram with panel board and voltage drop calculations; performing routine design and application using digitizers, plotters, CRTs and associated peripheral equipment; preparing design tapes for pattern generation, determining scales; performing calculations and preparing layouts, renditions, variations, and similar applications; digitizing and entering drawings and specifications and editing, revising, and updating changes to existing drawings, and converting circuit drawings to any configuration; designing detailed electrical layout of cable tray, earthing and bonding cable glands and sleeve, transformer, H.V.SB and L.V.SB using AutoCAD 2004; maintaining controls such as HVAC magnetic contractor and fuse and control units, and performing electrical and air conditioning installation as well as electrical equipment installation such as generator circuit breakers, panel boards, relays, water pumps, compressor, and gearboxes; developing application of controls, instruments, and systems aimed at improving performance and directing activities of projects; interfacing with management and employees to discuss existing and potential engineering problems; analyzing malfunctioning apparatus and machines by using electrical tools, blueprints, and schematic diagrams of machines; directing and coordinating the operation, maintenance, and repair of equipment and systems in the petitioner's projects; testing malfunctioning machinery and discussing the breakdown with maintenance workers and resolving the issues; and supporting all cross-functional and capital efforts. For the proposed position, the petitioner requires a bachelor's degree in electrical engineering and previous work experience.

The director denied the petition, finding that the proposed duties reflect those of an electrical engineer technician and an electrical engineer drafter as those occupations are described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* indicates that these occupations do not require a baccalaureate degree in a specific specialty. The director noted that although the petitioner titled the proposed position "electrical engineer," the beneficiary will actually provide services as an unlicensed subordinate to an electrical engineer. Based on section 6740 of the Professional Engineers Act, the director concluded that subordinates to professional engineers cannot use the title of "electrical engineer" and that the beneficiary could perform engineering duties under the supervision of a licensed engineer, but that the beneficiary could not perform engineering duties as an "electrical engineer." The director found the submitted job postings, counsel's statements about the complexity and uniqueness of the proposed position, and the petitioner's assertion that CIS already approved a similar position as a specialty occupation

unpersuasive in establishing the proffered position as a specialty occupation. The director concluded that the evidence submitted failed to satisfy one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed duties pertain to an electrical engineer and that the *Handbook* supports his statement. According to counsel, the beneficiary will be supervised by a licensed electrical engineer. Counsel states that the petitioner is a contractor of electrical engineering jobs, providing electrical engineering services for architectural, industrial, and commercial projects. Counsel discusses exemptions under section 6737.3 of the 2004 Professional Engineers Act. Counsel submits copies of Internet job postings.

Upon review of the record, the petitioner has established one 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.

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As described by the petitioner the proposed duties are consistent with those of an electrical engineer, which the *Handbook* reveals is an occupation that requires a baccalaureate degree in a specific specialty such as electrical engineering. As such, the petitioner establishes the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will now consider whether the beneficiary is qualified for the proposed position, which resembles that of an electrical engineer.

According to the *Handbook*, an electrical engineer is required to have a bachelor's degree in engineering and possess proper licensure.

The record contains the beneficiary's transcript and bachelor of science degree in electrical engineering from the University of the East in the Philippine Islands. The educational evaluation from International [REDACTED] which is contained in the record, states that the beneficiary's bachelor's degree is the educational equivalent to a bachelor's degree in electrical engineering awarded by a regionally accredited college and university in the United States.

The California Professional Engineers Act, Business and Professions Code section 6700-6799, Chapter 7, Professional Engineers, Article 3, Application of Chapter, Section 6740, indicates that a subordinate to an electrical engineer is exempt from registration as an electrical engineer. It states:

A subordinate to a civil, electrical or mechanical engineer registered under this chapter, or a subordinate to a civil, electrical or mechanical engineer exempted from registration under this chapter, insofar as he acts solely in such capacity, is exempt from registration under the provisions of this chapter. This exemption, however, does not permit any such subordinate to practice civil, electrical or mechanical engineering in his own right or to use the title, "civil engineer" or "structural engineer" or "electrical engineer" or "mechanical engineer" or "soil engineer."

Section 6705 of the California Professional Engineers Act defines a subordinate as “any person who assists a registered professional engineer in the practice of professional engineering without assuming responsible charge of work.”

The petitioner does not require licensure for the proposed position; however, the submitted organizational chart reflects that the beneficiary will work under the supervision of a licensed electrical engineer. The record contains documentation from the State Board of Registration for Professional Engineers indicating that the petitioner employs a registered electrical engineer.

Based on the evidence in the record, the AAO finds that the beneficiary is qualified for the proposed position.

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.

**ORDER:** The appeal is sustained. The petition is approved.