

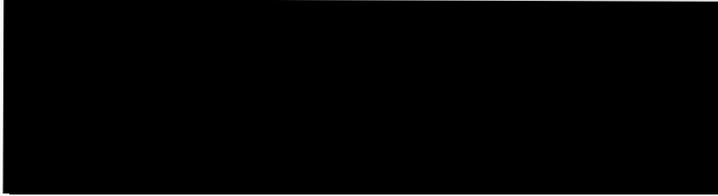
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Services

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FILE: LIN 04 266 53086 Office: NEBRASKA SERVICE CENTER Date: SEP 27 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Nebraska Service Center. 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 a company involved in the development and manufacture of Global Positioning System (GPS) technology-based products.¹ The petitioner seeks to employ the beneficiary as a Marine Applications & Infrastructure Specialist (Marine Applications Specialist), and endeavors to classify him 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 determined that the proffered position qualified as a specialty occupation, as set forth in section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and as further defined in Title 8 of the Code of Federal Regulations (8 C.F.R.) section 214.2(h)(4)(ii). The director found, however, that the petitioner had failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation pursuant to the Act or the Code of Federal Regulations.

Section 214(i)(1) of the Act 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 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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

¹ "GPS" is defined by the petitioner as a "[w]orldwide radio-navigation system formed from a constellation of 24 satellites and their ground stations" used to calculate positions accurate to a matter of meters, or with advanced forms of GPS, to better than a centimeter. See [REDACTED]

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

8 C.F.R. § 214.2(h)(4)(iii)(C) provides further that to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (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.

In the present matter, it is uncontested that the beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university, or a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. The beneficiary also does not hold an unrestricted State license, registration or certification which authorizes him to fully practice the specialty occupation or to be immediately engaged in the specialty. The beneficiary thus does not satisfy the requirements set forth in Section 214(i)(2)(A) and (B) of the Act, and in 8 C.F.R. § 214.2(h)(4)(iii)(C), subsections (1), (2), and (3). The issue in the present matter therefore centers on whether the beneficiary satisfies the requirements set forth in Section 214(i)(2)(2)(C) of the Act, as clarified in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), provides that for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree means achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (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.

Counsel asserts on appeal that the beneficiary satisfies the requirements set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Counsel contends that the evidence contained in the record establishes that the beneficiary has completed three years of post-secondary education in geomatics, a subset of civil engineering, and that the beneficiary has three years of employment experience working with degreed professionals in positions involving the application of geomatics engineering theories and principles. Counsel asserts that the director erred in finding that the beneficiary's qualifying experience in H-1B equivalency cases must be gained in a specialty occupation position, or that it must meet Department of Labor, *Occupational Outlook Handbook (Handbook)* educational standards, and counsel concludes that the beneficiary satisfies the "3 for 1" equivalency requirements for a baccalaureate degree in the specialty occupation.²

The record contains copies of the following evidence relating to the beneficiary's education and qualifying experience:

An April 7, 2004, "Determination of Expertise" signed by ██████████ stating that he has "[t]he authority to grant college-level credit for courses taken at other U.S. or international universities, and I can recommend that credit be awarded, for verifiable college-level learning acquired through work experience, through the State University of New York Empire State College." Professor ██████████ concludes that the beneficiary's education, work and professional training are the equivalent of a Bachelor of Science degree in Civil Engineering from an accredited institution of higher education in the United States.

An August 7, 2002 letter signed by the Director of Assessment Services at Empire State College, State University of New York (SUNY), stating that Professor ██████████ is the Director of the Industrial Management Program at SUNY Stony Brook, and is on its list of expert evaluators. The letter states that Professor ██████████ [h]as particular expertise in the review of foreign credentials, and the learning derived from such business-related experience, to determine its academic equivalence." The letter additionally states that, "SUNY Empire State College awards credit based upon verifiable college level learning acquired through experience and independent study" and that "[p]rofessors, including Professor Schiller evaluate such learning and

² Under the "3 for 1" equivalency standard, a baccalaureate degree requirement may be satisfied by demonstrating three years of specialized training and/or work experience for each year of college-level training the beneficiary lacks.

recommend credit based upon the student's individualized knowledge-base as documented by essays and credentials".

A May 25, 2005 letter signed by Senior Evaluating Professor and the Managing Director of Morningside Evaluations and Consulting, stating in pertinent part that, "[n]o college or university gives the authority to 'grant college credit' to a single professor but instead authorizes qualified professors to recommend granting credit for work experience. Since Empire State College gives this authorization to Professor Schiller, he is qualified to evaluate work experience."

June 18, 2004, and May 25, 2005, Morningside Evaluations and Consulting, Evaluations of Academics reflecting that the beneficiary's has the academic equivalent of three years of academic coursework from an accredited institution of higher education in the United States.

A September 27, 2004, "Determination of Expertise" by Professor [REDACTED] University of Tennessee, stating that Professor [REDACTED] has "[t]he authority to evaluate foreign educational credits, experience, training, and/or courses taken at other U.S. or international universities, and to determine whether credit will be awarded to a student by the University." Professor [REDACTED] determined that the beneficiary's academic, work and professional training is the academic equivalent of a Bachelor of Science degree in Civil Engineering from an accredited institution of higher education in the United States.

An October 31, 2002 letter signed by the Associate Dean for Academic Affairs, College of Engineering, University of Tennessee, stating that the university awards credit to foreign students *based on evaluations of courses* that they have taken at international institutions, and that Professor [REDACTED] evaluates such credentials and determines whether the University should award credit to a student. (Emphasis added.)

Nova Scotia Community College transcripts and diplomas reflecting that the beneficiary attended classes and obtained a diploma in Geomatics Engineering Technology on June 14, 2000, and an Advanced Diploma with Honors in Marine Geomatics Centre of Geographic Science on April 27, 2002. The college transcripts reflect course completion grades of 60 or above, but do not reflect the credits earned in the classes.

A May 19, 2005 letter signed by the Registrar of the Annapolis Valley Campus of Nova Scotia Community College, and general transcript information provided by Nova Scotia Community College reflecting that the college implemented a new student information system in 2001, and that although records from 1997 to 2001 were converted, the records from this period do not reflect the student's attempted or earned credits. The May 19, 2005 letter states further that "[a] passing grade of 60 or above is assigned to each course, and such a grade indicates that the learning objectives of the course have been achieved. The standard credit weight for courses within the NSCC is 60 hours (4 hours per week x 15 weeks of instruction.)"

Nova Scotia Community College diploma information stating that Marine Geomatics, Advanced Diploma is a one-year advanced diploma program "[d]esigned to complement an existing university degree in the sciences, a two-year diploma in a related field of study, or previous geomatics-related experience."

A September 21, 2004, letter signed by the former Vice President at [REDACTED], a land-surveying company, confirming the beneficiary's full-time employment as a Survey Technician (Technology) in TN visa status from May 2000 through June 2001. The letter describes the beneficiary's job duties and states that the beneficiary regularly interacted with professionals with bachelor's degrees, and that he qualified as a geomatics professional in all regards.

September 21, 2004, and May 27, 2005, letters signed by the President of [REDACTED] stating that the beneficiary worked for the company on a full-time basis as a Survey Crew Chief between June 2002 and June 2004. The letters describe the beneficiary's job duties and state that the beneficiary worked closely with professionals who possessed bachelor's degrees or their equivalent.

A September 20, 2004 letter signed by [REDACTED] President of Measutronics Corporation, stating that the company "[i]s a full-service provider of marine positioning systems for vessel navigation, precise piling, structure placement and remote vessel tracking and coastal surveying." The letter outlines Mr. [REDACTED] educational and work background and evaluates the beneficiary's education and experience, concluding that the beneficiary "[d]isplays a command of all of the core disciplines associated with a bachelor's degree in geomatics engineering".

A September 23, 2004 letter signed by [REDACTED] Vice-President of Technical Sales for Western Data Systems. The letter outlines Mr. [REDACTED] education and work background and states that Mr. [REDACTED] is an expert in the "[g]lobal positioning system technology equipment and geomatics field as it relates to surveying and mapping applications." Mr. [REDACTED] concludes that upon review of the beneficiary's education and experience, the beneficiary's command of the theories, principles and applications of geomatics engineering exceeded the knowledge a new graduate of a bachelor's degree in geomatics engineering would have.

Based upon a thorough review of the evidence contained in the record, the AAO finds that the petitioner has established that the beneficiary has completed the academic equivalent of three years of academic coursework from an accredited institution of higher education in the United States.

It is noted that the beneficiary's past work experience may only be evaluated by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The AAO finds that in the present matter the petitioner has established that SUNY Empire State College is an accredited college which has a program for granting college credit based on an individual's training and/or work experience. The petitioner has additionally established that Professor [REDACTED] has authority to evaluate and recommend the granting of college-level credit for training and/or experience in the specialty at SUNY Empire State College. Moreover, the AAO finds that Professor [REDACTED]'s conclusion that the beneficiary's education, work, and professional training are equivalent to a Bachelor of Science degree in Civil Engineering from an accredited institution of higher learning in the United States, is supported by the cumulative evidence contained in the record. Accordingly, the AAO finds that the petitioner has established that the requirements set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) have been met, and that the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The AAO finds that the petitioner has sustained the burden of establishing that the beneficiary has an education that is equivalent to completion of a United States baccalaureate or higher degree in a specialty occupation, as set forth in 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(4) and 214.2(h)(4)(iii)(D)(1). The appeal shall therefore be sustained.

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