

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

b2

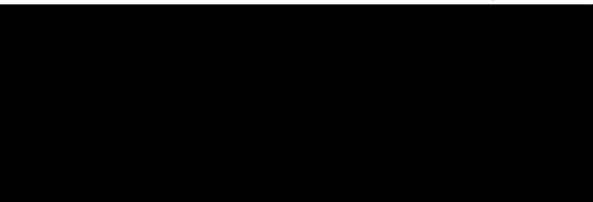


FILE: WAC 05 183 50711 Office: CALIFORNIA SERVICE CENTER Date: DEC 06 2007

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 sustained. The petition will be approved.

The petitioner is an engineering firm that seeks to employ the beneficiary as a civil engineer 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 denied the petition stating that the proffered position does not qualify as a specialty occupation. The petitioner then appealed the director's determination and concurrently filed a motion to reopen and reconsider. That motion was denied by the director on December 5, 2005, and the director's decision in that regard was not appealed to the AAO. The matter before the AAO is the director's decision of August 11, 2005. On appeal the petitioner submits a brief and additional information 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; (5) the Form I-290B with counsel's brief; and (6) the director's decision denying the petitioner's motion to reopen and reconsider. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a civil engineer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to the evidence the petitioner would:

- Utilize his knowledge of structural engineering techniques, the design of engineering systems, and engineering and design calculations in planning, scheduling, conducting, and coordinating detailed phases of engineering work including design and construction;
- Perform reviews of calculations and designs of woods, concretes, steels, and modular structures;
- Perform field inspections of existing residential/commercial construction for general conformance with architectural drawings and site plans, and will prepare written reports based on such inspections;
- Perform work that involves conventional engineering practice but may also include complex features such as resolving conflicting design requirements, unsuitability of conventional materials and/or difficult coordination requirements;
- Perform work using client specific engineering programs and appropriate 2-dimensional and 3-dimensional computer aided design and computer aided engineering tools;
- Review the bid analyses with the head P.E. and will make recommendations;
- Assist in the preparation of conceptual studies, designs, reports, or proposals;
- Perform or assist in the performance of problem analyses and original design; and

- Assist the P.E. in preparing cost estimates, quantity take-offs and staffing requirements for proposals, forecasts and change orders.

The petitioner requires a minimum of a bachelor's degree in civil 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 are essentially those performed by engineers. The *Handbook* notes that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. The position does, therefore, qualify as a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered specialty occupation. The director did not determine that issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The petitioner's foreign education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in civil engineering from an accredited college or university in the United States. Engineers in California are required to be licensed unless they are exempted from the licensing requirement. The petitioner submitted a letter from Nancy A. Eissleer, the enforcement program manager for the California Board For Professional Engineers and Land Surveyors, which states that the beneficiary may perform the duties of a civil engineer without a license if he works as a subordinate under the supervision of a licensed civil engineer. The record establishes that the beneficiary will work under the direct supervision of a licensed civil engineer.<sup>1</sup> The beneficiary is, therefore, qualified to perform the duties of the proffered position.

As always, 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.

---

<sup>1</sup> The petitioner states that the beneficiary will work under the supervision and control of [REDACTED], a licensed civil engineer in California, and submitted a copy of Mr. [REDACTED]'s civil engineering license.