



U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



D2

FILE: WAC 05 142 51019 Office: CALIFORNIA SERVICE CENTER Date: JAN 22 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 director of the California 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 a firm providing engineering services to municipal and county governments, architects, and commercial and institutional enterprises, with five employees. It seeks to employ the beneficiary as a mechanical engineer. The director denied the petition because he determined the petitioner had failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (4) Form I-290B, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner states that it seeks the beneficiary’s services as a mechanical engineer. Evidence of the beneficiary’s duties includes: the Form I-129 and the petitioner’s June 20, 2005 response to the director’s request for evidence.

At the time of filing, the petitioner stated the proffered position was that of a junior mechanical designer/drafter who would be engaged in HVAC and plumbing design. In response to the director’s request for evidence, the petitioner stated that the position was that of a mechanical engineer, indicating that beneficiary would be required to:

- Read and interpret blueprints, technical drawings, schematics and computer-generated reports;
- Research, design and evaluate mechanical products, equipment, systems and processes to meet requirements, applying knowledge of engineering principles;
- Assist drafters in the completion of design, using drafting tools and computer-assisted design/drafting software;
- Provide feedback to design engineers on clients’ needs;
- Prepare drawings of heating, ventilating, air conditioning (HVAC) and plumbing designs for commercial, industrial and institutional projects;
- Perform and analyze load calculations for the HVAC system;
- Perform and analyze “Model Energy Code Compliance Report” calculations for new buildings as required by the local authorities;
- Perform Life Cycle Cost (LCC) analysis to select the most economical investment of the HVAC system;
- Analyze data determining plumbing unit sizes and system specifications;

- Conduct internal (with subcontractors) and external (with clients) meetings, as needed;
- Conduct onsite surveys of commercial, entertainment and institutional facilities in the Southern Nevada area;
- Prepare construction cost estimates for various HVAC and plumbing projects;
- Participate in conferences with clients and contractors, such as “Bid and Construction” meetings;
- Respond to requests for information from contractors and clients/owners;
- Conduct seminar series with other engineers to incorporate the most up-to-date complex technological society; and
- Participate in “Local Engineering Chapter” meetings, including the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and the US Green Building Council and the Leadership in Energy and Environmental Design (LEED).

The petitioner stated that the proffered position requires knowledge of: the practical application of engineering science and technology; design techniques, tools and principles involved in the production of precision technical plans, blueprints, drawings and designs; arithmetic, algebra, geometry, calculus, statistics and their applications; business and management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique, production methods and the coordination of people and resources; the structure and content of the English language, including the meaning and spelling of words, rules of composition and grammar; circuit boards, processors, chips, electronic equipment and computer hardware and software, including applications and programming; and physical principles, laws, their interrelationships and applications to understanding fluid, material and atmospheric dynamics and mechanical, electrical, atomic and subatomic structures and processes. A job posting memorandum submitted in support of the petitioner’s response indicates that the petitioner is seeking engineers/designers with a bachelor’s or higher degree in mechanical engineering.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors considered by the AAO when determining these criteria include: whether the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree; whether the industry’s professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms “routinely employ and recruit only degreed individuals.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In his denial, the director concluded that the proffered position’s duties established it as that of a drafter, employment involving the preparation of technical drawings and plans to build a range of products and structures that would not impose a degree requirement on the beneficiary.

On appeal, counsel contends that the director ignored the design aspects of the proffered position and that the proffered position is that of a mechanical engineer with an annual salary of \$42,000, an income level above that of a draftsman. Counsel further asserts that the organizational chart submitted by the petitioner shows draftsmen as subordinate to the engineering positions. He also notes that the first page of the petitioner's handbook, "Mechanical Engineering Qualifications," establishes that it has three mechanical engineers and a registered professional engineer and, therefore, demonstrates that the proffered position is that of an engineer/designer.

Counsel also submits documentation related to four projects on which the beneficiary appears to have worked while completing his practical training with the petitioner to establish the proffered position as a specialty occupation – project plans for the City Center, Las Vegas and the ██████████ Middle School; a "Life Cycle Cost Analysis Study" for the ██████████ Middle School; and the mechanical drawings for the Pinnacle project in Henderson, Nevada. Counsel asserts that the beneficiary is the mechanical designer on the City Center project and in charge of mechanical engineering for the ██████████ Middle School and Pinnacle projects. He indicates that the beneficiary is the author of the "Life Cycle Cost Analysis Study."

The AAO, as discussed below, will consider whether the design component of the proffered position's duties establish it as that of a mechanical engineer. It turns first, however, to counsel's assertions that the salary of \$42,000 to be paid to the beneficiary and the petitioner's handbook and organizational chart are proof that the petitioner would employ the beneficiary as a mechanical engineer, as well his representations of the proof provided by the submitted project documentation.

The record does not, as counsel contends, establish that the petitioner will pay the beneficiary a salary of \$42,000 plus benefits to perform the duties of the proffered position. While the AAO notes that this is the salary referenced in the petitioner's response to the director's request for evidence, it is not the salary indicated on the Form I-129 or the supporting Labor Condition Application (LCA). Neither is it the salary offered the beneficiary in the September 22, 2004 employment letter sent to him by the petitioner. In each of these documents, the petitioner has indicated that the salary to be paid to the beneficiary for performing the duties of the proffered position, at least initially, would be \$30,000. Accordingly, the record establishes that the petitioner intends to pay the beneficiary a salary of \$30,000, not \$42,000 as claimed by counsel.

The handbook and organizational chart referenced by counsel offer inconsistent views of the petitioner's organization. While the handbook states the petitioner's professional staff consists of three mechanical designers and one registered professional engineer, the organizational chart describes the petitioner's operations as being handled by two engineers and two drafters. Therefore, the petitioner's handbook does not establish that the position to be filled by the beneficiary would be that of an engineer/designer. It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The documentation counsel submits on appeal largely fails to support his description of the beneficiary's responsibilities on the referenced projects. Only the Life Cycle Cost Analysis Study indicates that, as counsel claims, it was prepared by the beneficiary. The project plan for the City Center shows that the beneficiary

completed the mechanical drawings, not that he was the mechanical designer on the project. The plan for ██████████ ██████████ Middle School states that the mechanicals were drawn and designed by the beneficiary, but shows the petitioner's president, not the beneficiary, as the mechanical engineer. The mechanical drawings for the Pinnacle project also fail to indicate that the beneficiary was in charge of mechanical engineering. They show only that the mechanicals were drawn and checked by the beneficiary. Accordingly, while the project documentation counsel submits on appeal establishes the beneficiary's involvement in the petitioner's business operations, it does not demonstrate that he served in the role of mechanical engineer.

As previously noted, the petitioner claims that the proffered position it initially described as a junior designer/drafter is that of a mechanical engineer. To determine whether this is the case, the AAO has reviewed the duties described by the petitioner in relation to the 2006-2007 DOL *Handbook's* discussion of the occupation of engineer, which includes a specific description of the work performed by mechanical engineers. As indicated by the *Handbook's* general discussion of the engineering profession at pages 133-134:

Engineers apply the theories and principles of science and mathematics to develop economical solutions to technical problems

In addition to design and development, many engineers work in testing, production, or maintenance. These engineers supervise production in factories, determine the causes of component failure, and test manufactured products to maintain quality. They also estimate the time and cost to complete projects

At page 136, the *Handbook* offers the following description of the work of industrial engineers:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines, as well as power-using machines, such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

A review of the proffered position's duties finds the majority to reflect employment performed by mechanical drafters who prepare drawings showing the detail and assembly of a wide variety of machinery and mechanical devices [*Handbook*, page 142] and mechanical engineering technicians who assist in the design, development, testing and manufacturing of industrial machinery and who record and analyze data, make calculations and estimates, and report on their findings. [*Handbook*, pages 144-145]. Neither of these occupations imposes a degree requirement on the beneficiary. However, the requirements that the beneficiary

“research, design and evaluate mechanical products, equipment, systems and processes” and “conduct on-site surveys of commercial, entertainment and institutional facilities” distinguish the proffered position from either of the occupations just described. The design of mechanical products and systems is work that is performed by mechanical engineers, as described above. The evaluation of facilities is not performed by engineering technicians. Therefore, although the AAO does not find the proffered position to be that of a mechanical engineer, it, nevertheless, concludes that the beneficiary’s performance of the duties of the position require the type of engineering skills possessed by mechanical engineers, employment that normally requires those seeking entry-level employment to hold baccalaureate degrees in engineering [*Handbook*, page 137]. As the proffered position requires the beneficiary to perform duties requiring the type of knowledge gained through a baccalaureate degree in engineering, the petitioner has established the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO now turns to the issue of whether the beneficiary is qualified to perform the duties of a specialty occupation.

Specific discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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.

To establish the beneficiary’s qualifications to perform the duties of a specialty occupation, the petitioner has submitted a copy of the beneficiary’s 2003 master’s degree in engineering from the University of Nevada. The degree indicates that the beneficiary’s major was in mechanical engineering. As the beneficiary holds a U.S. master’s degree in engineering, a degree required by the proffered position, the petitioner has established the beneficiary’s qualifications to perform the duties of a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

For reasons previously discussed, the petitioner has established the proffered position as a specialty occupation under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) and the beneficiary as qualified to perform the duties of a specialty occupation pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(I). Accordingly, the appeal will be sustained. The petition will be approved.

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 satisfied its burden in this proceeding.

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