



U.S. Citizenship
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Services

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FILE: SRC 06 080 50572 Office: TEXAS SERVICE CENTER Date: JUN 28 2007

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 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 dismissed. The petition will be denied.

The petitioner is a religious congregation and educational institution and seeks to employ the beneficiary as an industrial engineer. The petitioner 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 position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the proffered position is a specialty occupation.

The 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; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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

- Analyze data and specifications to determine and establish quality standards for improvement of existing facilities and building of new facilities and fixtures valued at over \$11,500,000;
- Develop methods and procedures for the hiring of subcontractors, labor utilization and cost analysis systems;
- Recommend methods for improving utilization of materials, personnel, and utilities, in keeping with pre-established synagogue budgets, current costs of materials and labor, and engineering practices;
- Coordinate quality control objectives to resolve problems, maximize reliability and efficiency, and minimize costs;
- Confer with vendors, subcontractors, and members of the Board of Directors regarding purchases, procedures, specifications, capabilities, and status of ongoing projects;
- Review schedules, specifications, plans, blueprints, orders, and related information and make day-to-day decisions accordingly;
- Oversee renovation and new construction activities for the physical facilities which exceed 70,000 square feet (house of worship, early childhood preschool, religious school for students of all ages, adult education center, social/banquet hall, and executive offices); and
- Develop and implement security and safety standards for the congregation and school.

The petitioner finds the beneficiary qualified for the proffered position by virtue of his bachelor's degree in electrical engineering from the University of New Mexico.

The AAO routinely consults the 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 noted for construction managers, not industrial engineers as stated by the petitioner. The petitioner seeks the beneficiary's services to oversee the state of its property. Noting that the property is over 20 years old, the petitioner states that it requires extensive renovation and oversight in a hurricane prone region. It seeks to retrofit its facilities to comply with current building codes to prevent significant damage in the event of future natural disasters. The beneficiary would, among other things, oversee renovation and new construction for the physical facilities. These duties are normally performed by construction managers.

The *Handbook* notes that construction managers plan and coordinate construction projects. Such managers are known by many titles, including: constructors; construction superintendents; general superintendents; project engineers; project managers; general construction managers; or executive construction managers. These individuals manage, coordinate, and supervise the construction process from the conceptual development stage through final construction on a timely and economical basis. Given designs for a particular project, they oversee the organization, scheduling, and implementation of the project to execute those designs. They are responsible for coordinating and managing people, materials, and equipment; budgets, schedules, and contracts; and safety of employees and the general public. Construction managers oversee the completion of all construction in accordance with the engineer's and architect's specifications and prevailing building codes. They evaluate and determine appropriate construction methods and cost effective plans and schedules. This may require sophisticated estimating and scheduling techniques and the use of computers with specialized software. They regularly prepare progress reports and meet with owners, other constructors, trade contractors, vendors, architects, engineers, and others to monitor and coordinate all phases of a construction project. These are essentially the duties of the proffered position. The *Handbook* notes that even though degrees are increasingly preferred in the industry, a baccalaureate or higher degree in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has not, therefore, satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and that an engineer is a specialty occupation requiring a minimum of a bachelor's degree in engineering. The petitioner is correct in its assertion that an engineer is a specialty occupation requiring a bachelor's degree in engineering. The proffered position, however, is not that of an engineer, but of a construction manager as set forth above. The petitioner notes that even if the position is deemed to be that of a construction manager as asserted by the director, the position still qualifies as a specialty occupation. In support of that assertion, the petitioner submitted copies of five job advertisements for construction project/managers. Two advertisements state that a bachelor's degree is preferred, but not required. Two state that a degree is required, but do not state that the degree need be in any particular discipline. One requires a degree in construction management, architecture, engineering, or business. The advertisements submitted do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. None of the advertisements submitted are from organizations similar in nature to that of the petitioner. The petitioner has failed to establish the referenced criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree or its equivalent for the proffered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record does not establish that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor does the record establish that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As detailed by the petitioner, the duties to be performed are of the type normally performed by construction managers and related positions. Those positions do not normally require a baccalaureate level education as noted in the *Handbook*. The petitioner has failed to present evidence of tasks to be performed by the beneficiary that differ from tasks ordinarily performed by construction managers in the industry who do not possess a bachelor's degree. There is nothing in the record to establish that performance of the tasks designated in the petitioner's organizational environment require the theoretical and practical application of at least a baccalaureate level of a body of highly specialized knowledge in engineering. The petitioner has not satisfied the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.