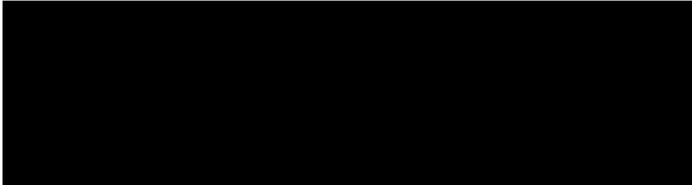




U.S. Citizenship
and Immigration
Services

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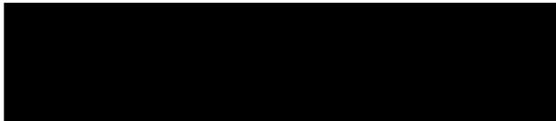


DZ

MAR 09 2007

FILE: LIN 05 185 51746 Office: NEBRASKA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 acting 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 corporation provides information technology (IT) specialists to provide services to other firms on a contract basis. In order to employ him as a computer hardware engineer, the petitioner filed this H-1B petition to attain classification of 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that there was insufficient evidence about the specific duties that the beneficiary would actually perform for the firm to which he would be detailed to provide services. The director also found that the petitioner did not establish itself as the beneficiary's employer because it "provided no information regarding how the work of the beneficiary will be controlled and supervised by the petitioning entity."

On appeal, the petitioner contends that the evidence of record establishes both that the proffered position is a specialty occupation and that the petitioner is the beneficiary's employer within the meaning of the H-1B regulations.

The evidence of record substantiates counsel's position. Accordingly, the appeal will be sustained, and the petition will be approved. The AAO bases its decision upon its consideration of the entire record of proceeding before it, including (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's September 25, 2005 appeal letter, with its enclosures of new and previously submitted documentary evidence.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 [1] 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 [2] 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.

Consonant with the earlier cited definitions of “specialty occupation” at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), Citizenship and Immigration Services (CIS) consistently 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 performance of 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.

There are two memoranda in the record from Intel Corporation (Intel), the petitioner’s client for whom the beneficiary will work. One of the memoranda is submitted on appeal to provide additional information about the beneficiary’s work at Intel, including an extended period of the beneficiary’s assignment there and a

statement that beneficiary's Intel work requires "at least a Master's Degree in Electrical Engineering." The petitioner's descriptions of the proposed duties and Intel's descriptions of the particular work that the beneficiary would perform for it are consistent, and together they indicate that the proffered position is a computer hardware engineer position that requires the minimum of a baccalaureate degree in a related field. Therefore, the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which qualifies a position as a specialty occupation if a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into that particular position.

Further, the contractual documents submitted into the record are sufficient evidence that the petitioner is the beneficiary's employer within the meaning of the H-1B regulations.

The record contains copies of the beneficiary's diploma and academic transcript evidencing a master's degree in electrical engineering from the University of Southern California. The Department of Labor's *Occupational Outlook Handbook* indicates that a bachelor's degree in engineering is required for almost all entry-level engineering jobs, and that engineers trained in one branch may work in related branches. Therefore, the beneficiary is qualified to serve in the specialty occupation in accordance with the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

The petitioner has established that the position is a specialty occupation and that the beneficiary is qualified to perform the services of the specialty occupation. Accordingly, the appeal will be sustained and 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 sustained that burden. Accordingly, the appeal will be sustained.

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