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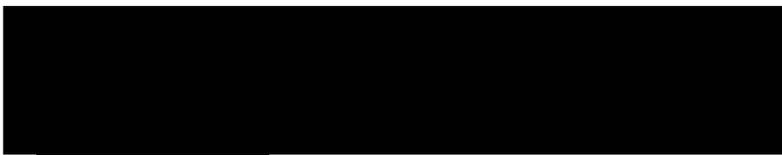


FILE: EAC 06 153 50581 Office: VERMONT SERVICE CENTER Date: **JAN 02 2008**

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.

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 provides geotechnical and environmental engineering and construction materials testing services. It seeks to employ the beneficiary as an environmental engineer technician 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, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal the petitioner submits a brief and additional information stating that the offered position is a specialty occupation, and that the beneficiary is qualified to perform the duties of 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; and (5) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an environmental engineer technician. 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:

- Collect field data for environmental assessment and remediation projects, general equipment operation and replacement; and
- Inspect construction sites for quality of soils, concrete, etc., and prepare technical reports according to governmental regulations and industry standards.

The petitioner requires a minimum of a bachelor’s degree in engineering, engineering technology, or environmental science 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 generally described, and from the limited description provided, it cannot be determined that the position is that of an environmental engineer as stated by the petitioner. Based upon the current record, the duties are more closely related to those of an environmental engineering technician, not an environmental engineer.

The *Handbook* notes that engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and more practically oriented than that of engineers. Environmental engineering technicians work closely with environmental engineers and scientists

in developing methods and devices used in the prevention, control, or correction of environmental hazards. They inspect and maintain equipment related to air pollution and recycling. Some inspect water and wastewater treatment systems to ensure that pollution control requirements are met. The *Handbook's* description of environmental engineering technicians and the nature of their work is consistent with the duties to be performed by the beneficiary in the petitioner's work environment. Further, the petitioner refers to the position as an environmental engineering technician on the Form I-129, and the LCA obtained for the position is for an environmental engineering technician. The salary being paid the position is the prevailing wage noted on the LCA for environmental engineering technicians. The *Handbook* notes that average starting salary for an environmental engineer is \$47,384, approximately \$10,000 per year more than that being offered the beneficiary (\$36,608.) As further noted in the *Handbook*, while it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions or colleges and universities, and public and private vocational-technical schools, and in the Armed forces. A bachelor's degree in a specific course of study is not normally the minimum requirement for entry into the position. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner asserts that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. In support of that assertion he submits copies of numerous job advertisements for environmental technician or scientist positions. The advertisements submitted, however, do not establish the petitioner's assertion. It cannot be determined that any of the advertisements are from organizations similar in nature and scope to that of the petitioner. While some of the advertisements require a bachelor's degree in a specific educational discipline, others require a degree but do not require the degree to be in any particular educational discipline, or state that a degree is preferred, but not required. Still others require only an associate's degree, or a high school diploma with 2-4 years of experience, or experience alone. The advertisements submitted do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for entry into 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 petitioner has not established that the duties to be performed by the beneficiary are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor has it been established that the duties of the position 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. The duties detailed by the petitioner for the position are so generally described that it is not possible to analyze the complexity or uniqueness of the position so as to determine whether the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. The duties described by the petitioner are routinely performed in the petitioner's business environment by engineering technicians who possess less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered position. As noted above, the petitioner has not established that the position qualifies as a specialty occupation. As such, there is no regulatory requirement that the beneficiary possess any specific level of education in order to perform the duties of the position. It should be noted, however, that the petitioner states that the beneficiary holds a bachelor's degree in mechanical engineering from a Nigerian university, and that the degree is equivalent to a bachelor's degree in mechanical engineering from an accredited college or university in the United States. The petitioner, therefore, concludes that the beneficiary is qualified to perform the duties of the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In support of that assertion, the petitioner submitted an evaluation of the beneficiary's foreign education by a credentials evaluation service. The credentials evaluation submitted by Worldwide Education Evaluators, Inc., however, is not supported by copies of the beneficiary's transcripts from the beneficiary's university. Nor did the evaluator indicate that he reviewed the beneficiary's transcripts. A photocopy of a diploma alone is insufficient to establish that the beneficiary completed a foreign degree which included university level coursework in subjects that would qualify the beneficiary to perform the duties of a specialty occupation. Without these transcripts, the basis of the credentials evaluation service's opinion as to educational equivalence cannot be determined, and the evaluation is, therefore, of little evidentiary value. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation.

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 failed to sustain that burden.

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