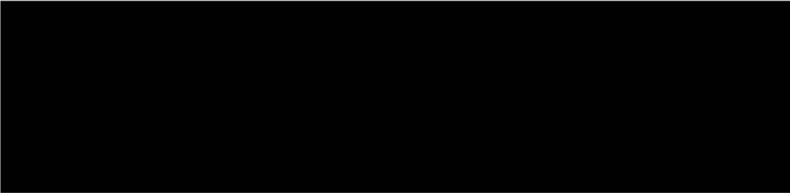




U.S. Citizenship
and Immigration
Services

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FILE: WAC 06 183 50462 Office: CALIFORNIA SERVICE CENTER Date: MAR 13 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

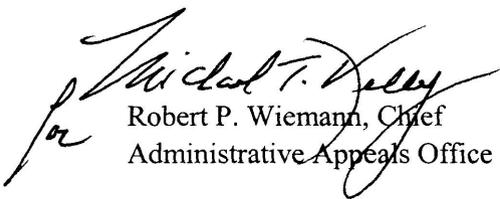
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.


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 electrical engineering and contracting business that seeks to extend its authorization to employ the beneficiary as an electrical engineer. The petitioner, therefore, 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel cites the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* to state that the proffered electrical engineering position qualifies as a specialty occupation. Counsel also states that as indicated in the RFE, [REDACTED] who is an electrical engineer licensed in the State of California, has responsibility over the beneficiary's work, and that the geographic distance between [REDACTED]'s office and the petitioner's business "will not hinder" such supervision, as the two businesses are located within the same time zone.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel'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 reaching its decision.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary does not possess the appropriate licensure as required by the position. The director also found that the petitioner had not submitted sufficient evidence that the beneficiary would perform the proposed duties under the supervision of a licensed engineer. The director concluded that the true nature of the proffered position is unclear.

On appeal, counsel cites the *Handbook* to state that the proffered electrical engineering position qualifies as a specialty occupation. Counsel also states that, as indicated in the RFE, [REDACTED] who is an electrical engineer licensed in the State of California, has responsibility over the beneficiary's work, and that the geographic distance between [REDACTED]'s office and the petitioner's business "will not hinder" such supervision, as the two businesses are located within the same time zone.

The record contains the following documentation pertaining to the beneficiary's qualifications:

A credentials evaluation from International Credentials Evaluation and Translation Services (ICETS), dated May 2003, based on the beneficiary's foreign Bachelor of Science degree in electrical engineering, concluding that the beneficiary holds the U.S. equivalent of a Bachelor of Science degree in electrical engineering; and

- A Bachelor of Science degree in electrical engineering – communications, awarded to the beneficiary by the Iranian university Amir Kabir University of Technology after his completion of the four-year course in September 1997.

The record also contains the following:

A certificate issued by the California State Board of Registration for Professional Engineers and Land Surveyors, dated February 1, 1991, certifying that [REDACTED] is duly registered as a professional engineer in electrical engineering; and

- An electrical engineer license issued to [REDACTED] by the State of California Board for Professional Engineers & Land Surveyors, with an expiration date of June 30, 2007.

In its *Handbook*, 2006-07 edition, the DOL finds that all 50 States and the District of Columbia require licensure for engineers who offer their services directly to the public. In this matter, the petitioner and counsel maintain that the beneficiary will perform the proposed duties under the supervision of an electrical engineer licensed in the State of California.

Pursuant to the Business and Professions Code of California, Chapter 7. Professional Engineers § 6730. Evidence of qualifications; registration:

In order to safeguard life, health, property and public welfare, any person, either in a public or private capacity, except as in this chapter specifically excepted, who practices, or offers to practice, civil engineering, electrical engineering or mechanical engineering, in any of its branches in this state, including any person employed by the State of California, or any city, county, or city and county, who practices engineering, shall submit evidence that he is qualified to practice, and shall be licensed accordingly as a civil engineer, electrical engineer or mechanical engineer by the board.

Pursuant to the Business and Professions Code of California, Chapter 7. Professional Engineers § 6740. Exemption of subordinates:

A subordinate to a civil, electrical or mechanical engineer licensed under this chapter, or a subordinate to a civil, electrical or mechanical engineer exempted from licensure under this chapter, insofar as he acts solely in that capacity, is exempt from licensure under the provisions of this chapter. This exemption, however, does not permit any such subordinate to practice civil, electrical or mechanical engineering in his own right or to use the titles listed in Section 6732, 6736, and 6736.1.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in electrical engineering. The beneficiary holds a foreign Bachelor of Science degree in electrical engineering, which has been evaluated as the U.S. equivalent of a Bachelor of Science degree in electrical engineering. The beneficiary will perform the proposed electrical engineering duties under the supervision of an electrical engineer, [REDACTED], who is licensed in the State of California. In addition to [REDACTED]'s credentials listed above, the record contains a letter from Mr. [REDACTED] certifying that he works for the petitioner as a consultant and reviews, checks, and verifies the correctness of all electrical designs, drawings and calculations before being submitted to the petitioner's clients. In view of the foregoing, the beneficiary is qualified to serve in that occupation as required by the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). 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 and the petition will be approved.

ORDER: The appeal is sustained, and the petition is approved.