

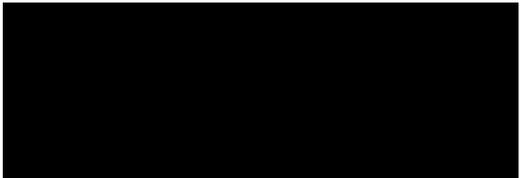


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-068-51171 Office: Vermont Service Center Date: 3 - APR 2002

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)

IN BEHALF OF PETITIONER:
SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company dealing with structural and miscellaneous steel fabrications on a commercial basis. It has 10 employees and a gross annual income of more than \$1 million. The petitioner seeks to employ the beneficiary as a project manager for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation. It is noted that an immigration consultant prepared the appeal and the accompanying brief on behalf of the petitioner. However, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, all representations will be considered but the decision will be furnished only to the petitioner.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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.

The director denied the petition because the evaluation of the beneficiary's foreign education shows the beneficiary to have only achieved the equivalent of a high school diploma in the United States. On appeal, the petitioner states that the Service disregarded the portion of the evaluation which states that the beneficiary completed four and one-half years of undergraduate course work in mechanical engineering. The petitioner asserts that the beneficiary has the equivalent of a bachelor's degree in

mechanical engineering from a U.S. university in that most U.S. universities require only 105 semester credits for a bachelor's degree in engineering, whereas the beneficiary completed the equivalent of 157 semester credits in mechanical engineering in the former Yugoslavia.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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 proffered position is that of a mechanical engineer working as a project manager. The duties of the position include doing estimations, material ordering, and the preparation of drawings by use of computer programming. The Department of Labor's Occupational Outlook Handbook, 2000-2001 Edition, states at page 86 that the usual minimum requirement for entry into the field of mechanical engineering is a bachelor's degree in mechanical engineering.

The record shows that the beneficiary completed all required course work for a bachelor's degree in mechanical engineering at the College of Mechanical Engineering, University of Nis, in the former Yugoslavia on October 1, 1997. The beneficiary did not receive a bachelor's degree in mechanical engineering from that institution

because she failed to complete two requirements for the degree: an examination on Automated Operations and a thesis.

The beneficiary's foreign education was found by a credentials evaluation service to be equivalent to a high school diploma and four and one-half years of undergraduate study in mechanical engineering at a regionally accredited university in the United States. The evaluator performed a course-by-course analysis of the beneficiary's course work and found that the beneficiary has completed the equivalent of 157 U.S. semester credits in the field of mechanical engineering.

In response to a Service request for additional evidence, the petitioner explained that the beneficiary was unable to complete the remaining requirements for her baccalaureate degree because she was forced to flee the former Yugoslavia due to the civil unrest in that country. The petitioner contends that the beneficiary's course work combined with her work experience makes her "more than qualified" for the position being offered. However, the record contains no corroborating evidence of the beneficiary's purported work experience such as tax records, contracts, or payroll documentation. Nor does the record contain any specific details of the beneficiary's purported work experience including the company's name, location, the scope of activities, or the duties performed by the beneficiary during such employment.

The beneficiary clearly does not hold a bachelor's degree in mechanical engineering because she did not complete the requirements for that degree in her country. The petitioner has not submitted an evaluation report finding the beneficiary's foreign education to be equivalent to a bachelor's degree in mechanical engineering from a regionally accredited university in the United States. Furthermore, no documentation has been submitted to show that the beneficiary has relevant work experience in the field of mechanical engineering.

On appeal, the petitioner argues that the beneficiary's foreign education is equivalent to a bachelor's degree in mechanical engineering from a U.S. university because most U.S. universities require 105 semester credits for that degree, and the beneficiary completed the equivalent of 157 semester credits in her country. In support of this assertion, the petitioner submits a list of courses required by the College of Engineering, California State Polytechnic University at Pomona. However, the petitioner has not provided any documentation from a reliable credentials evaluation service finding that the beneficiary has completed a comparable curriculum to that typically completed by an undergraduate engineering student in the United States. Therefore, the Service does not find the petitioner's argument persuasive.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.