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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 087 56245 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [redacted]
Beneficiary

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

ON BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 an environmental engineering business that seeks to employ the beneficiary as a water quality controller. 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a statement and indicates that a brief and/or additional evidence will be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

Section 214(i)(2) of the Immigration and Nationality Act (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;
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> *(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, in part: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a water quality controller. The petitioner indicated in its December 7, 2001 letter that the beneficiary's extensive experience, training, and education qualified him for

the proffered position. The petitioner does not specify whether it requires a baccalaureate degree in a specific field of study for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the beneficiary's college education qualifies him for the proffered position and, therefore, there is no need to combine the beneficiary's education and experience when considering the beneficiary's qualifications. As such, only the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) will be discussed.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a specific specialty. The proffered position is similar to that of an environmental scientist. The Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2004-2005 edition, finds that environmental scientists require at least a bachelor's degree in hydrogeology; environmental, civil, or geological engineering; or geochemistry or geology. The beneficiary holds a baccalaureate degree in "Natural Resources Engineering (Fisheries)" and a master's degree in "Fishery Management" from Iranian institutions. An evaluator from the Academic Credentials Evaluation Institute, Inc. (ACEI) found the beneficiary's education equivalent to a Bachelor of Science in Fisheries degree and a Master of Science in Fisheries degree as awarded by regionally accredited U.S. institutions of higher education. The record, however, contains no evidence that the beneficiary's degrees in a fishery-related field qualify him as an environmental scientist, a position that requires at least a bachelor's degree in hydrogeology; environmental, civil, or geological engineering; or geochemistry or geology. For this reason, the petition may not be approved.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.

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