U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: WAC 02 097 53517 Office: CALIFORNIA SERVICE CENTER Date: JAN 0 8 2004

IN RE: Petitioner:
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:

[redacted]

INSTRUCTIONS:
This is the decision 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.

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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. 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 importer and distributor of varied natural stone products. It has seven employees, a gross annual income of $1,700,000, and seeks to employ the beneficiary as a design engineer. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel states that the proffered position falls within the classification of a civil engineer and is a specialty occupation. Counsel also submits: a more detailed job description by the petitioner's president, [redacted] and an opinion letter from [redacted] President of Topnotch International Services, Inc.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 requires theoretical and practical application of a body of highly specialized knowledge in field 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;
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> 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;
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> 3. The employer normally requires a degree or its equivalent for the position; or
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> 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

> The job duties to be performed by [the beneficiary] will be highly-specialized and complex. More specifically, his primary focus will be the direction, coordination, and exercise of functional authority in the planning, organization, control, integration, and completion of a wide array of engineering projects placed within his realm of authority.
>
> To this end, among his responsibilities will include the preparation of drawings, in conjunction with our AutoCAD (computer aided design) system that chiefly centers on the design and layout of the various residential and commercial architectural structures to be filled with our natural stone products. Because of the wide variations of the different structures, each drawing and design features its own nuances and configurations.
>
> Moreover, [the beneficiary] will also take into

> consideration a wide variety of factors including building and fire protection codes, structural principles, engineering-related issues, physical science applications, and drafting-oriented techniques. He will also provide cost estimations, taking into account the principles outlined above, and will further approximate manpower usage. After completing the design and layout of the architectural structure for a particular site, [the beneficiary] will then supervise the actual construction of the structure and its installation with our stone products to ensure that all relevant standards and governmental codes are met.
>
> In the final series of work to be performed by [the beneficiary], he will partake in the review of product design work, which must be in compliance with established engineering principles, company standards, customer contract requirements, and related specifications. In this regard, he will coordinate all activities concerned with technical developments, scheduling, and resolving engineering and test problems.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. The director asked that the petitioner provide: a detailed job description; a listing of the types of employees to be supervised; a statement of the minimum education, training, and experience necessary for the position; evidence that the duties of the offered position satisfy at least one of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A); a copy of the beneficiary's engineering license, or evidence that a license is not required; a copy of the beneficiary's engineering degree; a copy of the beneficiary's I-94; and copies of all prior I-797 approval notices issued to the beneficiary.

In response to the director's request, the petitioner provided the following job description:

> [A]s our design engineer, [the beneficiary] will be primarily responsible for the overall direction, coordination, and exercise of varied engineering projects requiring his attention. This will initially include the preparation of detailed and technical plans in accordance with engineering principles before the actual work of the project is set to take place. The drawings and designs to be supervised by [the beneficiary] will each feature their own nuances and configurations based upon the particular design-related work to be performed. Consequently, the position will require that the Design Engineer evaluate and approve design work contingent upon the style sought by the

> ultimate end user. This will further include handling such areas as technical developments as it applies to ascertaining the proper engineering specifications of the project to be designed, as well as resolving various engineering design and test problems which tend to occur on each project. In overseeing the engineering aspect to the project, our Design Engineer must further monitor all costs as well as overseeing project personnel to specific phases of the engineering project including technical analysis, product design, planning, and testing. It should be noted that the individuals that he will be supervising will also be university-degreed professionals with backgrounds in either architecture or engineering.
>
> Conversely, as part of this aspect to the position, and as noted previously, [the beneficiary] through his extensive professional and theoretical background, will apply his architectural/engineering background in order to address a wide variety of factors including structural principles, engineering-related issues, physical science applications, and drafting-oriented techniques. Moreover, as part of the overall supervision of engineering personnel, [the beneficiary] will also be required [to] provide cost estimations taking into account each of the factors set forth in [sic] previously in this letter. In the final aspect to the job, upon completion of the design and layout for the particular project in mind, [the beneficiary] will then supervise the actual installation of the stonework and will ensure that the work to be completed has met all relevant building standards and local/state governmental codes.

In further response to the director's request, the petitioner stated that an engineering license is not required in the State of California for the proffered position. Specifically, the petitioner cited Section 5538 of the California Business and Practices Code which notes that licensure is not required where an individual may be providing services or other data for nonstructural or nonseismic storefronts, or interior alterations or additions. The petitioner noted that its business is involved exclusively in providing interior alterations/additions not requiring a Civil Engineering License.

The petitioner also submitted an opinion letter from [redacted] President of Topnotch International Services [Topnotch]. Topnotch is a job placement agency specializing in the placement of professionals including, but not necessarily limited to, accountants, computer specialists, marketing professionals, and medical personnel. Ms [redacted] opined that the position of design engineer required a four-year degree in engineering, or an

architecturally-related specialty.

The director denied the petition stating that the job description submitted for the offered position was generic in nature and did not clearly indicate the duties to be performed. The director further held that the petitioner did not establish that the position met any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and additional information. Counsel states that the proffered position falls within the classification of a civil engineer and is a specialty occupation. Counsel also submits: a more detailed job description by the petitioner's president, [redacted] and an opinion letter from [redacted] President of Topnotch International Services, Inc.

The expanded job description does not provide new duties not previously alluded to, but further explains the beneficiary's proposed duties as follows:

> As our Design Engineer, [the beneficiary] will be provided with an overall description regarding the client's desired specifications. At this point, he will then assist in the preparation of detailed and comprehensive plans and designs. In so doing, [the beneficiary] will be responsible for applying extensive engineering principles. This will require him to first ensure that the stone products to be used in the interior construction will be properly designed so as to enable the structure to withhold the additional loads that will be superimposed. Consequently, various structural engineering principles will be utilized by our Design Engineer who will have to consult with the architect who did the actual design of the structure so as to ensure that the stone loads can be properly accepted into the structure. In addition, survey engineering principles will also have to be applied by the Design Engineer for this position in order to properly calculate how much stone will be needed within a particular structure that will ultimately not cause harm to it.
>
> Thereafter, once the initial design work of the stone products into a given structure has been completed by the design Engineer, and he has further ensured, in conjunction with the structure's licensed architect and interior designer, that the additional loads of natural stone products can be superimposed into the structure without causing damage to the structure, the Design Engineer must also be on-hand when the actual construction of the stonework takes

> place. In so doing, the Design Engineer will have to resolve any engineering-related problems that may occur as a result of the construction of the natural stone products. Such issues may include structural-related problems, construction or engineering related issues (i.e. applying engineering principles to determine whether the strength of the materials may later cause damage to the structure based upon load configurations), as well as other similar types of concerns.
>
> Third, our Design Engineer will equally be responsible for applying engineering principles in order to ascertain such aspects as building construction costs, project personnel costs, and design analysis. This aspect of the job is equally important in that through this calculation, we will be better-able to calculate our overall cost, on a project-to-project basis, so that an accurate bid may be given.
>
> In the final aspect to the job, aside from what has already been indicated, [the beneficiary] will then supervise the actual installation of the stonework in order [to] ensure that the work to be completed will meet all relevant building standards and local/state governmental codes. . . .

In the *Occupational Outlook Handbook*, 2002-03 edition,(*Handbook*) at 109, the Department Of Labor details the duties of a civil engineer:

> Civil Engineers design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. Civil engineering, considered one of the oldest engineering disciplines, encompasses many specialties. The major specialties within civil engineering are structural, water resources, environmental, construction, transportation, and geotechnical engineering.
>
> Many civil engineers hold supervisory or administrative positions, from supervisor of a construction site to city engineer. Others may work in design, construction, research, and teaching.

The duties of the offered position fall within those performed by civil engineers. The beneficiary would perform some duties not necessarily classifiable as professional in nature. Many of the duties assigned to the proffered position are, however, specialized in nature. For example, the beneficiary will:

assist in the preparation of detailed and comprehensive plans and designs based upon an overall description provided by a client- this will require the beneficiary to apply engineering principles, in consultation with architects or structural design engineers, in designing stone layout in such a manner as to ensure that the product load to be placed in the structure will not damage the structure when placed, or at some point in the future; apply survey engineering principles to calculate how much stone to place on a given project without exceeding acceptable load limitations for the structure; and provide estimations of building construction and personnel costs based upon design analysis for the completed project. The duties to be performed by the beneficiary are performed by civil engineers in design and construction work, or construction supervision.

The *Handbook* further notes that a bachelor's degree in engineering is required for almost all entry level engineering jobs. *Id.* at 104. The proffered position, therefore, satisfies the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The position offered is a specialty occupation.

The second and final issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the specialty occupation.

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:

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C) (i) completion of such experience in the specialty equivalent to the degree, and

(ii) 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, the position 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 beneficiary holds a Bachelor's Degree in Civil Engineering from the University of Assumption in the Philippines. That degree was determined by a reputable credentials evaluation service to be equivalent to a United States Bachelor's Degree in Civil Engineering from an accredited college or university in the United States. The beneficiary is, therefore, qualified for the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). A license is not required in the State of California to perform the duties of the offered position.

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. The appeal will be sustained. The petition will be approved.

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