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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: WAC-02-121-51374 Office: CALIFORNIA SERVICE CENTER Date: JAN 16 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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 that 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a civil and structural engineering business with 15 employees and a gross annual income of $1,581,629.44. It seeks to employ the beneficiary as a civil engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the petitioner had complied with the terms of the labor condition application. The director further determined that the petitioner had not submitted evidence that it maintains a valid civil engineering license in the State of California.

On appeal, counsel submits a statement and additional information.

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 petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, which appears to be that of an engineering technician. The director further found that the petitioner had not complied with the terms of the labor condition application that lists the job title of the proffered position as "civil engineer." The director additionally found that the petitioner had not submitted evidence that it maintains a valid engineering license for the State of California.

On appeal, counsel states, in part, that the petitioner's intent from the outset was to offer a junior engineer position to the beneficiary. Counsel further states that the petitioner's intent can be seen in its labor condition application that reflects the proffered position as part-time with a salary of $24.00 per hour.

The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Plans, designs, and directs civil engineering projects, such as roads, railroads, bridges, utilities, sewer and drainage systems (50[%]);

2. Analyzes reports, maps, drawings, blueprints, tests, and aerial photographs on soil composition, terrain, hydrological characteristics, and other topographical and geologic data to plan and design project (20[%]);

3. Calculates cost and determines feasibility of project based on analysis of collected data, applying knowledge and techniques of engineering, and advanced mathematics (10[%]);

4. Prepares or directs preparation and modification of reports, specifications, plans, construction schedules, environmental impact studies, and designs for project (10[%]); and

5. Inspects constructions [sic] site to monitor progress and ensure conformance to engineering plans, specifications, and construction and safety standards (10[%]).

In a letter dated March 19, 2002, the petitioner's principal amends the job title of the proffered position to "junior engineer." He states, in part, as follows:

> As a Junior Engineer, [the beneficiary] will be assisting our senior engineers on our projects. [The beneficiary] will not be authorized to sign off on any of our documents or projects.

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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in civil engineering or a related field. The proffered position is primarily that of a civil engineering technician. In its *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition, the Department of Labor (DOL) describes the position of a civil engineering technician as follows:

> *Civil engineering technicians* help civil engineers plan and build highways, buildings, bridges, dams, wastewater treatment systems, and other structures, and perform related surveys and studies. . . .

A review of the DOL's *Handbook* at page 101 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a civil engineering technician. Most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as civil engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the petitioner's labor condition application and licensure need not be examined further in this proceeding.

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.