

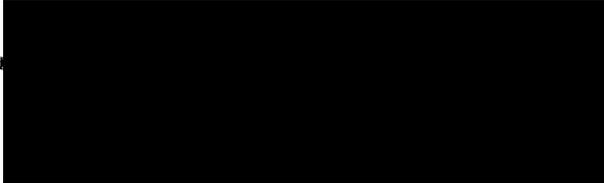
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 04 177 50285 Office: CALIFORNIA SERVICE CENTER Date: JAN 24 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
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 The director's decision will be withdrawn. The petition will be remanded.

The petitioner is a construction cost management consulting business that seeks to employ the beneficiary as a cost engineer/estimator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) 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 cost engineer/estimator. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's May 12, 2004 letter in support of the petition. According

to this evidence, the beneficiary would perform duties that entail: analyzing blueprints, schematic drawings and specifications, and other design documents to generate preliminary cost estimates on time, labor, and materials; coordinating with architects and engineers to clarify unclear design drawings and specifications; visiting the site of the proposed project and gathering information from the project design team pertaining to access to the site, surface topography, drainage, and to the availability of services such as electricity and water; applying specialized methodologies, techniques, and processes to determine quantity of materials plus labor and/or subcontractors required; preparing cost analysis of projects; preparing a total project-cost summary and bill of materials; generating a budget and cost estimates by compiling and analyzing data on all factors that will influence the cost of the project; evaluating change orders and assisting in the analysis of value engineering; preparing valuation, negotiation, settlement of change orders, settlement of final accounts, and other contractual claims; and instituting project cost-control measures to maintain the expenses with the estimated budget. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in engineering.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the director ignored the evidence. According to counsel, the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the director does not mention the expert testimony submitted by the petitioner.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the proffered position is that of a cost estimator for a construction cost management consulting business established in 1998. A review of the *Handbook*, 2006-2007 edition, finds that in the construction industry, employers increasingly prefer individuals with a degree in building construction, construction management, construction science, engineering, or architecture. The evidence of record establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Accordingly, the petitioner has overcome the grounds upon which the director denied the petition.

The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the services of a specialty occupation. In this case, the beneficiary holds two bachelor's degrees in civil engineering and in environmental and sanitary engineering, respectively, conferred by a Filipino institution. The record, however, does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of a cost estimator, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's June 12, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.