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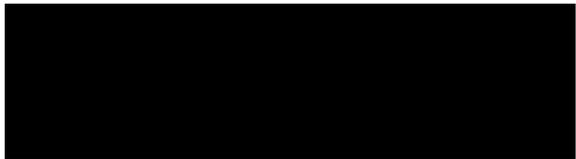


FILE: WAC 05 151 54408 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 engineering and construction firm, with six employees and \$2,500,000 in gross annual income. It seeks to employ the beneficiary as a civil engineer consultant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining: that the petitioner does not qualify as a United States employer; that the proffered position is not a specialty occupation; and, that the beneficiary does not possess the appropriate licensure for the proffered position.

The record of proceeding before the AAO contains: (1) the May 4, 2005 Form I-129 with supporting documentation; (2) the director's May 10, 2005 request for additional evidence (RFE); (3) counsel for the petitioner's July 28, 2005 response to the director's RFE and supporting documentation; (4) the director's August 15, 2005 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The first issue before the AAO is whether the petitioner qualifies as a United States employer. The regulation at 8 C.F.R. § 214.2(h)(4)(ii), states that a petitioner qualifies as a U.S. employer, if it:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax Identification Number.

The petitioner claims that it is a corporation organized under the laws of the State of California in February 2001. The director requested evidence on May 10, 2005 to establish that the petitioner is actively engaged in the engineering and construction business. The director requested, among other things, the petitioner's business licenses, copies of federal income taxes, and documentary examples of contracts, business plans, and blueprints. In a July 28, 2005 response, the petitioner provided copies of its 2003 and 2004 Internal Revenue Service (IRS) Forms 1120S, U.S. Income Tax Return for an S Corporation, sample sketches of building plans prepared by a registered civil engineer, its organizational chart showing seven employees, and its California Form DE-6, Quarterly Wage and Withholding Report showing five employees.

The director noted in his August 15, 2005 decision that the petitioner had not provided any existing or current business licenses to establish that it was conducting an engineering and construction business. The director also noted that a search of the records of the California Secretary of State – Business Portal as of August 5, 2005, showed that the petitioner had been suspended. The director determined that the petitioner's failure to provide a business license and the information received from the Internet search showed that the petitioner was no longer

doing business. The director concluded that the petitioner was no longer an active corporation, thus could not be an employer as defined at 8 C.F.R. § 214.2(h)(4)(ii).

On appeal, counsel for the petitioner provides an update from the California Secretary of State Business Portal showing that the petitioner is an active corporation as of September 30, 2005. Counsel explains that the petitioner was suspended for failure to pay taxes to the California Franchise Tax Board and upon payment of the required taxes was reinstated as an active corporation.

The AAO finds that the evidence of record is sufficient to establish that the petitioner is an active corporation and has satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(ii), as a U.S. employer.

The next issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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 fields 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;
- (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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a civil engineer consultant. Evidence of the beneficiary's duties includes the petitioner's April 21, 2005 letter in support of the petition and undated job description submitted in response to the director's RFE. The petitioner initially indicated that the civil engineer:

[W]ill consult with the architects, contractors, subcontractors, and draftsmen regarding the blueprints and drawings of the project. [The beneficiary] will review the plans and blueprints to make sure that they meet with the inspectors' regulations and specifications. He will supervise the work carried out by the contractors and subcontractors to monitor the progress and ensure conformance to the plans, specifications and construction and safety standards. He will also negotiate costs with the contractors and subcontractors. [The beneficiary] will calculate the cost and determine the feasibility of the project based on the analysis of the collected data, applying knowledge and techniques of engineering and advanced mathematics. In addition he will prepare reports, specifications, plans, construction schedules and designs for the projects.

The petitioner also noted: "[t]his position requires a college degree because the position of Civil Engineer requires the knowledge of math, ability to read blueprints, read topography maps, knowledge of building codes, and other knowledge that you acquire while obtaining a Bachelors degree in Engineering."

In the petitioner's job description of the position submitted in response to the director's RFE, the petitioner stated that the beneficiary's job duties as a "civil engineer consultant" included consultation with architects, contractors, subcontractors, and draftsmen regarding the blueprints, drawings, design, and construction of specific projects, structures, and facilities. The petitioner provided a list of responsibilities and duties that included:

- I. Apply knowledge and techniques of engineering and advanced mathematics.
- II. Review plans and blueprints to ensure that regulations and specifications are met.
- III. Supervise the work carried out by the contractors and subcontractors to monitor the progress and ensure conformance to plans, specifications, construction and safety standards.
- IV. Negotiate costs with contractors and subcontractors.
- V. Determine feasibility of projects based on the analysis of collected data.
- VI. Prepare reports, specifications, plans, construction schedules and designs for projects.

The petitioner noted that it could not assign a specific amount of time to each task as some tasks are performed daily, while others are performed monthly, quarterly, or yearly.

The petitioner's organizational chart showed seven employees including an employee in the civil engineering department and an employee in the architectural engineering department. The record also included the civil engineering employee's registration as a California professional engineer in civil engineering.

Counsel for the petitioner also submitted four job announcements for positions as: (1) a civil engineer for an engineering company that required a bachelor's degree in civil engineering and preferred an E.I.T. certificate, and experience in several computer design programs; (2) a civil engineer for an engineering company with 42,000 employees that provided a detailed description of the program mission and that required a bachelor's degree in civil engineering and desired E.I.T. professional registration; (3) a civil engineer for an engineering consulting firm that required a bachelor's degree in civil engineering and certain skills, and preferred an E.I.T.; and (4) a civil designer/civil project engineer that briefly described the duties of the position and that required a bachelor's degree in civil engineering, experience, skills in computer programs, and preferred an E.I.T. certificate.

On August 15, 2005, the director denied the petition determining that the petitioner would employ the beneficiary in the capacity of a construction manager and that construction managers generally have substantial experience as construction craft workers or after having worked as construction supervisors or as owners of independent specialty contracting firms overseeing workers in one or more construction trades. The director concluded that the petitioner had not met its burden of proof demonstrating that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner asserts that the proffered position includes not only consulting with architects and contractors regarding the blueprints, drawings, design, and construction of specific projects but also includes the application of engineering and mathematic techniques to ensure that the projects are constructed in a safe manner so as to benefit the public. Counsel contends that the duties of the proffered position require the beneficiary to analyze data collected regarding projects to determine if the projects are feasible and that the beneficiary must have the technical background to ensure that the engineering aspects of a project are performed to code. Counsel avers that the proffered position is more than a construction manager and instead is a civil engineer, a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. In this matter, the AAO will review the general description of the duties of the proffered position in an effort to ascertain if the duties of the position comport with those of a civil engineer, a specialty occupation.

The 2006-2007 edition of the *Handbook* indicates that "[e]ngineers apply the principles of science and mathematics to develop economical solutions to technical problems." The *Handbook* discusses the employment of civil engineers as follows:

Civil engineers design and supervise the construction of roads, buildings, airports, tunnels, dams, bridges, and water supply and sewage systems. They must consider many factors in the design process, from the construction costs and expected lifetime of a project to governmental regulations and potential environmental hazards such as earthquakes. Civil engineering, considered one of the oldest engineering disciplines, encompasses many specialties. The major specialties are structural, water resources, construction, environmental, 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 2006-2007 edition of the *Handbook* reports the duties of a construction manager include the following:

Construction managers plan, direct, and coordinate a wide variety of construction projects, including the building of all types of residential, commercial, and industrial structures, roads, bridges, wastewater treatment plants, and schools and hospitals. Construction managers may oversee an entire project or just part of a project and, although they usually play no direct role in the actual construction of a structure, they typically schedule and coordinate all design and construction processes, including the selection, hiring, and oversight of specialty trade contractors.

* * *

Construction managers coordinate and supervise the construction process from the conceptual development stage through final construction, making sure that the project gets done on time and within budget. They often work with owners, engineers, architects, and others who are involved in the construction process.

* * *

Construction managers determine the labor requirements and, in some cases, supervise or monitor the hiring and dismissal of workers. They oversee the performance of all trade contractors and are responsible for ensuring that all work is completed on schedule.

The petitioner's description corresponds to the *Handbook's* general description of the duties of a civil engineer and a construction manager. For example, the petitioner paraphrases the *Handbook's* statement that civil engineers apply the principles of science and mathematics to develop economical solutions to technical problems as well as the *Handbook's* statement that civil engineers consider many factors in the design process, including construction costs to governmental regulations. The petitioner also indicates that the duties of the proffered position include supervising and monitoring the work and progress of contractors and subcontractors and negotiating costs with contractors and subcontractors, duties that appear more related to the duties of a construction manager. The general description of the position does not provide sufficient information regarding the actual duties of the proffered position to establish that the duties are those of a civil engineer or a construction manager. A petitioner cannot rely on general statements when discussing the duties attached to specific employment. When establishing

a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

The petitioner's conclusion that the proffered position: "requires a college degree because the position of Civil Engineer requires the knowledge of math, ability to read blueprints, read topography maps, knowledge of building codes, and other knowledge that you acquire while obtaining a Bachelors degree in Engineering," is not independently substantiated. The knowledge of math, ability to read blueprints and topography maps, and knowledge of building codes are skills common in many endeavors associated with the construction business. The petitioner does not provide substantive evidence that the duties of the proffered position incorporate the theoretical and practical application of a body of highly specialized knowledge that requires the attainment of a bachelor's degree or higher degree in the specific specialty or its equivalent as a minimum for entry into the occupation in the United States. A vague reference to the general responsibilities of an occupation similar to that of a civil engineer or a construction manager without providing evidence of how the beneficiary will perform the tasks in relation to the petitioner's specific business is insufficient to establish that the duties are those of either occupation, or are the duties of a specialty occupation.

To reiterate, upon close review of the descriptions provided, the petitioner has opted to describe aspects of various occupations without providing a description of the specific duties included in the proffered position that are directly related to the petitioner's business. Here, the petitioner has not described what the individual in the proffered position will face in regard to engineering problems and how the individual will use his education to solve the problems. Moreover, the record does not detail the petitioner's projects nor explain how the petitioner will use the beneficiary's services to carry out the various projects. Stating generally that the beneficiary will ensure that the projects are constructed in a safe manner, determine whether projects are feasible, and ensure that the projects are performed to code, and completed properly may be construed to encompass a variety of occupations. Such general information and no language or documentary evidence connecting the nonspecific duties of those occupations to the petitioner's business is insufficient to establish the proffered position as a specialty occupation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations. The AAO finds that the petitioner has described employment that may include the tasks of a civil engineer, a construction manager, and other occupations. The AAO does not, however, find the petitioner's description of the position's duties sufficient to establish the position is that of a civil engineer. A petitioner cannot demonstrate that an offered position is a specialty occupation by listing the duties of the position in the same broad terms as those used by the *Handbook* to describe the occupation.

As previously discussed, the AAO requires information regarding the actual responsibilities of a proffered position to make its determination regarding the nature of that position and its degree requirements, if any. Without such information, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant matter offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of a civil engineer or a construction manager. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant matter, the petitioner submitted four job announcements for positions labeled "civil engineer" or "civil designer/civil project engineer." A close review of the descriptions of the duties for the four advertised positions and the advertising companies finds that the descriptions are not parallel to the general description provided by the petitioner for the proffered position, nor are the companies similar to the petitioner's business or industry. The job advertisements provide a brief listing of requirements and skills and do not detail the projects the incumbent will be involved in or alternatively detail projects that appear unrelated to the construction industry. The petitioner has not submitted job advertisements for positions that can be determined to be parallel to the proffered position other than in general title. Likewise, the petitioner has not shown that the companies advertising for "civil engineers" are similar to the petitioner. The evidence of record is insufficient to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative the petitioner may offer evidence to establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. In this matter, the AAO finds again that the description of the duties is so general that it cannot determine that the proffered position is complex or unique so that only a degreed individual in a specific discipline could perform the duties of the position. Thus, the petitioner has not satisfied the second prong of the criterion and, therefore, is unable to establish the proffered position as a specialty occupation by distinguishing the position from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): whether the employer normally requires a degree or its equivalent for the position; or whether the nature of the specific duties is so specialized

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

The petitioner has not provided evidence that it normally requires a degree or its equivalent for the position. The petitioner acknowledges that this is a newly created position. Thus, the record does not contain evidence establishing the petitioner's normal business practice is to hire individuals with a bachelor's degree in a specific discipline to carry out the duties of the proffered position. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. Without a meaningful list of duties related to its specific business operations, a petitioner may not establish that such duties are either specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The next issue in this matter is whether the State of California requires licensure to carry out the duties described for the proffered position. The AAO again observes that the description provided does not provide sufficient insight into the actual duties of the position to determine whether the beneficiary would be performing duties that require licensure in the State of California. The AAO has reviewed the California Business and Professions Code pertinent to the registration and licensure of civil engineers but cannot determine that the beneficiary's duties for the petitioner fall within any of the licensure requirements in the code. The record does not contain sufficient information to determine whether the State of California would require the beneficiary to obtain a license or would allow the beneficiary to work under the supervision of a licensed civil engineer in lieu of a license. As the petition has been denied on the grounds cited above, this issue will not be addressed further.

Beyond the decision of the director, the AAO observes that American Universities Admission Program (AUAP) has evaluated the beneficiary's foreign educational credentials. AUAP indicates on its letterhead that it is a member of the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The AAO is aware that AACRAO is suing AUAP for trademark infringement and misuse of its logo. Thus, the AAO questions AUAP's association with AACRAO and whether the AUAP has authority to issue credential evaluations. Again, as this matter has been decided on other issues, the credibility of the proffered evaluation will not be discussed further.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. As always, 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 met that burden.

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