

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

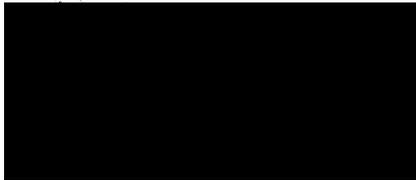
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2

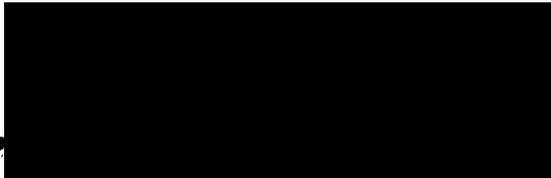


FILE: LIN 02 209 53704 Office: NEBRASKA SERVICE CENTER Date: MAY 11 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during his visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the 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 a construction business that seeks to employ the beneficiary as a mechanical engineer. 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 petitioner was adequately notified of CIS' intent to revoke on the grounds that the beneficiary is not qualified under 8 C.F.R. § 214.2(h)(11)(iii)(A)(5), and gave the petitioner thirty days within which to respond. The director revoked the approval of the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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 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;
- (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 approval letter; (5) the director's intent to revoke; (6) the petitioner's response to the director's intent to revoke; (7) the director's revocation letter; and (8) 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 mechanical engineer. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in mechanical engineering for the proffered position.

Upon review of the consular officer's report, the director found that the beneficiary was not qualified for the proffered position because the beneficiary did not speak English well enough to work in the United States as a mechanical engineer, and his work experience did not correlate to the proffered position. On appeal, counsel states, in part, that the record contains evidence that the beneficiary completed a TOEFL course and scored a nearly perfect score. Counsel states further that the record contains evidence of the beneficiary's various memberships to professional organizations whose second official language is English. Counsel also asserts that the consular officer lacked understanding of the duties of a mechanical engineer in the construction field, refused to speak English to the beneficiary, and was inconsistent and prejudicial.

The director found that the beneficiary must be proficient in English to perform duties as a mechanical engineer. On appeal, counsel does not contest that the beneficiary must have a command of the English language to perform the duties of the position. The AAO concurs and finds that proficiency in English is required to perform the duties of the position.

Counsel's submission of the beneficiary's memberships to professional organizations whose second official language is English is not probative as to the beneficiary's capabilities in the English language. Counsel's assertion that the beneficiary possesses more than an adequate knowledge of English because he successfully completed a TOEFL course is noted. It remains unclear, however, why the beneficiary was unable to demonstrate only "a very limited understanding of the English language" during his interview with the consular officer. Furthermore, a review of the letter, dated December 23, 2003, from The English Teacher Center in Iran, certifying that the beneficiary participated in its TOEFL classes finds that the duration of this training was from June 20, 2003 through December 22, 2003, after the filing of the instant petition on June 13, 2002. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Thus, the petitioner has failed to overcome the grounds for revoking the petition on appeal. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the specialty occupation.

Counsel's further assertion that the consular officer lacked an understanding of the duties of a mechanical engineer in the construction field, refused to speak English to the beneficiary, and was inconsistent and prejudicial is unfounded. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 revoked.