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U.S. Citizenship
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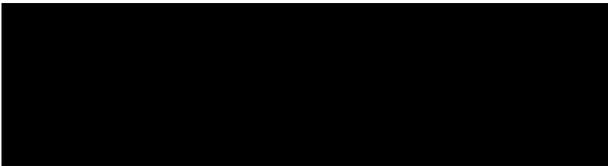
FILE: WAC 04 084 52770 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

IN RE: Petitioner:
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:



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

The petitioner is involved in the manufacture and sale of wholesale and retail bakery products. It seeks to employ the beneficiary as an environmental and sanitary specialist, and endeavors to classify him as a nonimmigrant worker in a specialty occupation 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

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

Section 101(a)(15)(H)(i)(b) of 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.

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:

[A]n 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 are 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) the 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 denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an environmental and sanitary specialist. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Manage all air pollution, solid and hazardous waste, and storm and wastewater permitting, compliance and reporting;
- Manage and control the process for waste segregation and disposal and recycling operation;
- Maintain full department budget responsibility;
- Manage all OSHA, CEZA, NEPA, ESA and TOSHA compliance;
- Maintain records and perform calculations necessary to complete all OSHA record keeping requirements, air emissions permitting, and annual waste summaries and disposal procedures;
- Be responsible for the plant's continued compliance with standards set forth by regulatory agencies;
- Prepare and implement guidelines, policies and procedures related to EH&S programs;
- Develop and implement training for employees on all facets of EH&S compliance;
- Be responsible for the planning, direction, implementation and control of all activities and personnel in order to deliver superior customer service with respect to the safety, sanitation, health and clean environment;

- Maintain the plant's integrated contingency plans and communication of such plans to local authorities;
- Conduct testing of all machineries and equipment such as HVAC, FP system, electrical system, hydraulic equipment as required by local, state and federal agencies to optimize engineering resources and efforts;
- Solicit and evaluate proposals and supervise outside work/contractors to maintain and achieve the highest quality of work;
- Be responsible for the administration of the plant's workers compensation system including coordination with a third party administrator and legal counsel;
- Supervise the work of four subordinate staff; and
- Serve as primary contact to represent the company in all environmental health and safety issues for all federal, state, and local regulatory agencies.

The petitioner requires a minimum of a bachelor's degree in environmental and sanitary engineering or environmental health and safety for entry into the proffered position.

Upon review of the record, the petitioner has established that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position appear to be those noted for occupational health and safety specialists and technicians. These occupations help prevent harm to workers, property, and the environment, as well as the general public. They promote occupational health and safety within organizations by developing safer, healthier, and more efficient ways of working. They may also conduct inspections and enforce adherence to laws, regulations, or employer policies governing worker health and safety. The *Handbook* notes that the majority of these occupations are in government agencies, but that others are employed in the private sector, including manufacturing. The *Handbook* notes that the requirements for becoming an occupational health and safety specialist or technician include a combination of education, experience, and passing scores on written examinations. While many employers, including the federal government, require a 4-year college degree in safety or a related field for some specialist positions, a degree requirement does not yet appear to be standard in the industry. The position does not, therefore, qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(ii)(I).

The petitioner has, however, established that the nature of the specific duties of the position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties detailed by the petitioner would be performed by the beneficiary at the petitioner's manufacturing facility. The facility employs 110 people and has gross annual foodstuff sales of approximately \$6,000,000. The industry in which the petitioner engages in business is highly regulated by federal, state and local governments. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(ii)(A) and the proffered position qualifies as a specialty occupation.

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation. The director did not determine this issue as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination. The beneficiary's foreign education was determined by a credentials evaluation service to be equivalent to a Bachelor of Science degree in Environmental and Sanitary engineering. The beneficiary is, therefore, qualified to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

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 and the appeal shall accordingly be sustained.

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