

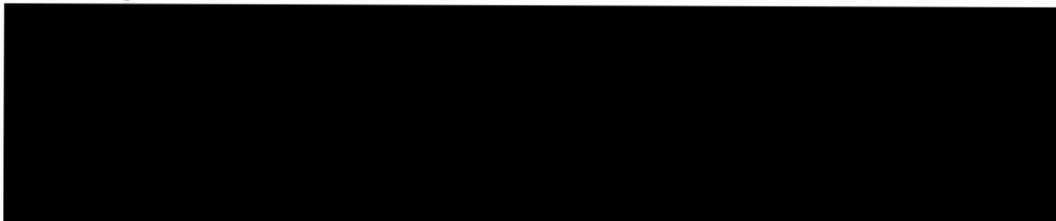


U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 04 080 52929 Office: NEBRASKA SERVICE CENTER Date: **MAR 03 2006**

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.

*San* *Michael T. Kelly*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 a software development and software/engineering consulting firm that seeks to employ the beneficiary as a design engineer. The petitioner, therefore, endeavors to classify the beneficiary 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 because the petitioner failed to establish that the proposed position qualifies as a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 design engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing and developing engine castings such as engine blocks, cylinder heads and pistons; and engineering design change implementation; acting as technical coordinator of offshore projects; modeling and making technical contributions including recommendations for improving current products and enhancing the product development life cycle; developing, installing, integrating, and providing training for advanced computer-aided design (CAD) and engineering and manufacturing software applications; performing dimensional design and modeling projects; analyzing product requirements and developing tools for specific customer needs; conducting feasibility studies in the CAD system, generating product definitions that satisfy the packaging envelope and structural load path requirements using CAD systems; interpreting concepts and customer requirements, and operational and structural performance requirements which are necessary to develop initial product concepts; and reviewing technical specifications and documents received from customers and using the CAD system to generate a three-dimensional surface and solid model while adhering to all specifications and requirements. The petitioner stated that the beneficiary must be knowledgeable in mechanisms, assemblies, sub-assemblies, and machinery and equipment components; machine design, theory of machines, and load conditions; static and dynamic analysis; and the interface between mechanical components, electronic gadgets, electrical power inputs, thermal conditions, and materials used for components. For the proposed position, the petitioner requires a baccalaureate degree, or its equivalent, in engineering or a related field.

The director denied the petition, stating that the petitioner is a consulting firm providing software development and software/engineering consulting to businesses; that the beneficiary will provide services to the petitioner's clients; that *Defensor vs. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000) indicates that the petitioner must show that the entities ultimately employing the alien must require at least a baccalaureate degree, or its equivalent, for all employees in the proposed position; and that absent a contract the director was unable to conclude that the beneficiary would perform the duties of a specialty occupation. The director found that the petitioner satisfied none of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a September 10, 2004 letter from the petitioner. The letter states that the beneficiary will work at the petitioner's headquarters in Birmingham Farms, Michigan, and that the headquarters has an in-house design center which is located near the automobile industry. The petitioner maintains that the beneficiary, who is now leading an offshore team of engineers in order to coordinate projects, will serve as technical coordinator of offshore projects. The petitioner states the following about the beneficiary's employment:

[The beneficiary] may be working for some of our clients. While we may require [him] to work on-site for specific projects from time to time for clients, the majority of his work will be done in-house at our design center.

Please be advised that the petitioner is not an “employment agency[.]” We are a full[-]service engineering and design/consulting firm. We always maintain control over our employees and have sole authority to hire/fire and make all personnel decisions (including payment of wages) regarding their employment. We conduct periodic performance reviews and have ultimate control over their work product.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner must establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. On appeal, the petitioner states that the proposed position involves designing and developing engine castings such as engine blocks, cylinder heads and pistons; and engineering design change implementation; using Pro/Engineer software for modeling and designing complex castings, forgings, plastic components, and sheet metal components, reverse engineering and large assembly management with top down design approach; performing ASME Y14.5 drafting standards and tolerance stack up analysis using geometric dimensioning and tolerances; and performing geometric dimensioning and tolerances as per ASME standards. As shown by the evidence in the record, the proposed duties resemble those of a mechanical engineer as that occupation is depicted in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), and the *Handbook* explains that almost all entry-level engineering jobs require a bachelor’s degree in engineering.

The AAO finds that the record reflects that the beneficiary will provide services as a design engineer, and will primarily provide these services from the petitioner’s headquarters. The petitioner’s June 11, 2004 and September 10, 2004 letters establish that the beneficiary will provide most design engineer services from the petitioner’s headquarters in Birmingham Farms, Michigan, and that the petitioner is not an employment agency. Accordingly, the petitioner establishes that it will be the beneficiary’s ultimate employer and that the proposed position qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record contains evidence that the beneficiary is qualified for the proposed position. The record reflects that the beneficiary holds a bachelor of technology degree in mechanical engineering from an institution in India, and that the educational evaluation from Trustforte Corporation states that the beneficiary’s degree is the equivalent of a bachelor of science degree in mechanical engineering from an accredited U.S. college or university. Based on this evidence, the beneficiary qualifies for the proposed position.

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.

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