

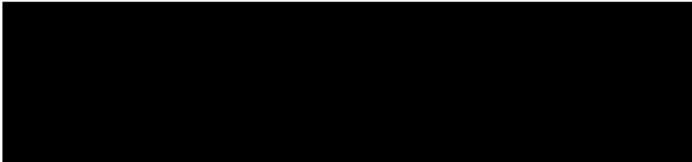
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 132 50524 Office: CALIFORNIA SERVICE CENTER Date: JUN 05 2007

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.

Rob
Michael T. Kelly
Robert P. Wiemann, Chief
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 supply of building materials, engineered equipment, piping materials, and electrical and instrumentation items for various engineering projects. It seeks to employ the beneficiary as a sales engineer 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 because the proffered position does not qualify as a specialty occupation. On appeal counsel submits a brief indicating that the offered position is 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 a sales engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Conduct management studies; collect and interpret economic and statistical data to prepare budget estimates; determine work load, personnel and equipment requirements; coordinate industrial efficiency in construction; and plan and develop construction policies and implement goals and schedules relating to civil engineering projects;
- Coordinate projected engineering tasks from design, production, process, supply, and shipment of goods or projects as needed;
- Plan, study and/or design underwater construction and building project procedures and materials;
- Conduct field observations in conjunction with data gathering for design projects to determine functional and special requirements of design;
- Prepare scale drawings using CAD; evaluate, select, study, and design mechanical systems for buildings such as gases, fluids, heating, ventilating, and air-conditioning;
- Analyze blueprints and specifications for steel structure material/cost estimation;
- Prepare information regarding design, specifications, materials, equipment, estimated cost and construction time for client review/approval;
- Conduct periodic on-site observation of work during construction to monitor compliance with plans and ensure the quality of construction work is up to standard; and

- Identify customer needs and sales opportunities to maximize and grow sales and assist customers by providing technical solutions.

The petitioner requires a minimum of a bachelor's degree in civil engineering 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 essentially those noted for sales engineers. Using their engineering skills, sales engineers help customers determine which products or services provided by the sales engineer's employer best suit their needs. These occupations are frequently referred to as manufacturers' agents, sales representatives, or technical sales support workers, and often work with production, engineering, or research and development departments to determine how products and services could be designed or modified to meet the customer's needs, and advise on how to best utilize the products or services provided. Sales engineers use their technical skills to demonstrate to potential customers how and why the products or services they are selling would suit the customer better than competitors' products. The petitioner specializes in the supply of building materials, engineered equipment, piping materials, electrical and instrumentation items for various engineering projects. The export of high quality and integrated equipment and materials to construction companies is the petitioner's main field of endeavor. The petitioner provides customized turnkey services designed to meet customers' specific needs ensuring the technical accuracy of all proposals and that all goods supplied by it are exact to customer specifications. The duties described for the position appear to be sufficiently complex to require the knowledge of an engineer to support sales functions. The *Handbook* notes that a bachelor's degree in engineering is usually required to become a sales engineer. The petitioner has, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the proffered position qualifies as a specialty occupation.

The director did not determine whether the beneficiary is qualified to perform the duties of the proffered position as the petition was denied on another ground. The record is, however, sufficient for the AAO to make that determination.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) 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, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary's foreign education has been determined by a reliable credentials evaluation service to be equivalent to a Bachelor of Science degree in Civil Engineering from an accredited college or university in

the United States. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The beneficiary is, therefore, qualified to perform the duties of a specialty occupation.

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. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.