

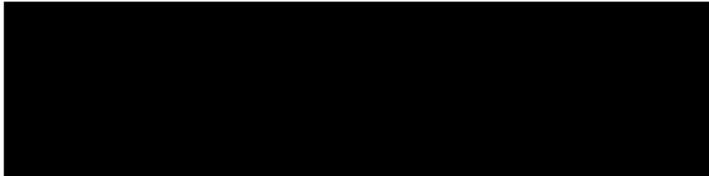
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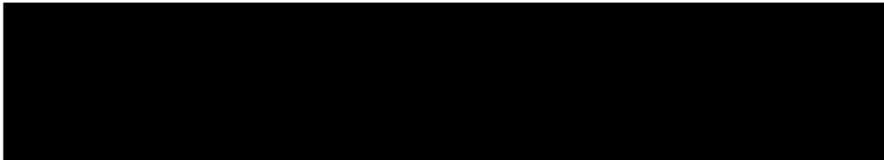
FILE: SRC 05 205 50510 Office: TEXAS SERVICE CENTER Date:

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, 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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner is an engineering consulting company that specializes in accident analysis, root cause failure analysis and product liability, commercial and vehicle accident reconstruction, industrial fires and explosions, biomechanical and ergonomics limitations analysis, engineering mechanics and design dynamics, stress analytics, fracture mechanics and forensic engineering. It seeks to employ the beneficiary as a civil 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 the petitioner submits a brief and additional information 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 civil engineer. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to the evidence the petitioner would:

- Review and analyze foundation damages;
- Prepare scientific evidence in root cause analysis;
- Perform non-destructive testing (defined as compromising test methods used to examine an object, material or system without impairing its future usefulness, for the purpose of detecting variations in structure, changes in surface finish, presence of cracks or other physical discontinuities and to determine the characteristics of industrial products);
- Prepare written reports for insurance, industrial, and legal firms, and other clients;

The petitioner's business involves the analysis of why structures fail, as well as determining the cause of accidents or other damage causing events.

The petitioner requires a minimum of a bachelor's degree in engineering for entry into the proffered position.

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 are essentially those performed by engineers. The *Handbook* notes that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. The position does, therefore, qualify as a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered

specialty occupation. The petitioner's foreign education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in civil engineering from an accredited college or university in the United States.

The petition may not be approved, however, as it appears that the beneficiary would be required to have a license in order to provide services as an engineer. Texas Engineering Practice Act & Rules § 1001.004(c)(2) provides that engineers in the State of Texas must be licensed. As it appears that the beneficiary will be practicing engineering without a license, he is not qualified to perform the services of the specialty occupation. The record does not reflect that the beneficiary would be exempt from the licensure requirements. As the director did not address this issue, the petition will be remanded in order to determine whether the beneficiary is qualified to perform the services of the specialty occupation. The director may request such additional information as she may deem necessary in rendering her 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.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner is to be certified to the AAO for review.