

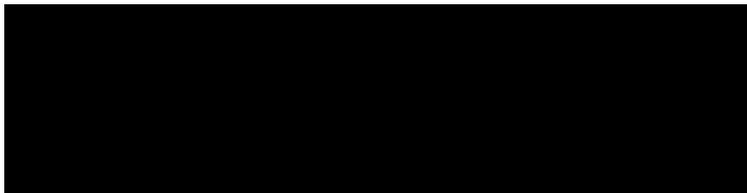
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 249 50292 Office: TEXAS SERVICE CENTER Date: FEB 17 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the Texas Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director is withdrawn. The petition is remanded to the director for consideration of the beneficiary's qualifications.

The petitioner is a business providing industrial automation services, largely to the automotive industry. It seeks to employ the beneficiary as a technical director of industrial automation. The director denied the petition because she determined the petitioner had failed to establish its proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's statement. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner seeks the beneficiary’s services as a technical director of industrial automation. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s September 17, 2004 letter in support of the Form I-129; and counsel’s October 7, 2004 response to the director’s request for evidence. As described both by counsel and the petitioner, the specific duties to be performed by the beneficiary are as follows:

- Oversee and set guidelines in electronics and industrial automation;
- Develop projects based in programmable logic controllers and industrial robots, specifically for the automotive industry;
- Develop and coordinate industrial automation to solve customer needs, executing and supervising projects during the electrical and software processes;
- Be responsible for programming programmable logic controllers, industrial robots and motor drives, and for electrical project designs;
- Supervise the petitioner’s operations in Brazil that specialize in automation using personal computers;
- Direct research and analysis to develop and implement automation projects in response to customer demand;
- Direct activities with petitioner’s engineering personnel to determine most efficient programs to perform experimental operations; and
- Evaluate performance of automation projects and operations, and submit reports of findings.

In her denial, the director found that the petitioner had failed to establish its proffered position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO does not agree. Instead, it finds the petitioner's position to be a specialty occupation under the first criterion -- a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Based on its review of the duties described above, the AAO finds the position to be closely aligned to the occupation of engineers, as described in the 2004-2005 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The *Handbook*, on which the AAO routinely relies for information on occupations, as well as the educational requirements for those occupations, describes the responsibilities of engineers as follows:

Engineers apply the theories and principles of science and mathematics to research and develop economical solutions to technical problems.... Engineers design products, machinery to build those products, plants in which those products are made, and the systems that ensure the quality of the products and the efficiency of the workforce and manufacturing process....

Most engineers specialize.... More than 25 major specialties are recognized...and the major branches have numerous subdivisions.... Engineers also may specialize in one industry, such as motor vehicles, or in one field of technology....

Engineers in each branch have a base of knowledge and training that can be applied in many fields....

Engineers use computers to produce and analyze designs; to simulate and test how a machine, structure, or system operates; and to generate specifications for parts.... They spend a great deal of time writing reports and consulting with other engineers, as complex projects often require an interdisciplinary team of engineers. Supervisory engineers are responsible for major components or entire projects.

The *Handbook's* description of the responsibilities of electrical engineers also discusses elements of the proffered position:

Electrical and electronics engineers specialize in different areas such as power generation, transmission, and distribution; communications; and electrical equipment manufacturing, or a specialty within one of these areas -- industrial robot control systems...for example. Electrical and electronics engineers design new products, write performance requirements and develop maintenance schedules. They also test equipment, solve operating problems, and estimate the time and cost of engineering projects.

The same is true of the *Handbook's* discussion of mechanical engineers:

Mechanical engineers research, develop, design, manufacture and test tools, engines, machines, and other mechanical devices....

Mechanical engineers work in many industries and their work varies by industry and function. Some specialize in energy systems; applied mechanics; automotive design, manufacturing; materials; plant engineering and maintenance.... Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

As the duties of the proffered position also identify supervisory responsibilities, specifically those with regard to the petitioner's Brazilian operations and its research and development activities, the AAO concludes that the position is not only that of an engineer, but of a supervisory engineer. As to whether a degree is required to obtain entry-level employment as an engineer, the DOL *Handbook* states:

A bachelor's degree in engineering is required for almost all entry-level engineering jobs. College graduates with a degree in a physical science or mathematics occasionally may qualify for some engineering jobs, especially in specialties in high demand. Most engineering degrees are granted in electrical, electronics, mechanical, or civil engineering. However, engineers trained in one branch may work in related branches.

In that the duties of the proffered position describe the occupation of engineer and the *Handbook* indicates that those seeking entry-level employment as engineers must hold the minimum of a baccalaureate degree in engineering or a related field, the AAO finds the petitioner to have established that its proffered position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). It, therefore, withdraws the finding of the director regarding the nature of the position and remands the petition to the director for consideration of the beneficiary's qualifications to perform the duties of the proffered position pursuant to the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C).

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 decision of the director is withdrawn. The matter is remanded to the director for further consideration of the beneficiary's qualifications and entry of a new decision that, if adverse to the petitioner, shall be certified to the AAO for review.