

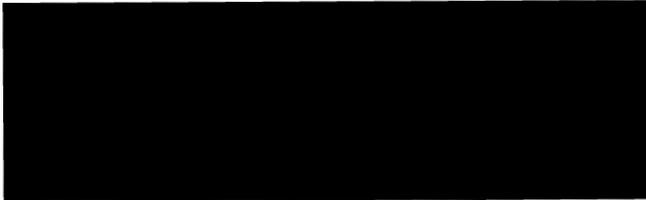
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
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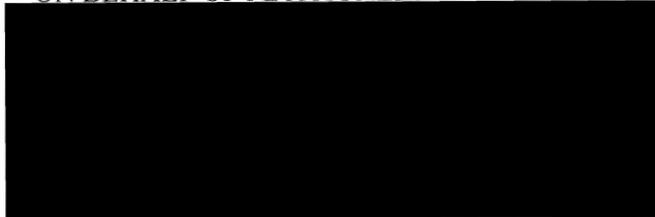
FILE: SRC 04 230 52824 Office: TEXAS SERVICE CENTER Date: **JUN 23 2006**

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.

Robert P. Wiemann, Chief
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 dismissed. The petition will be denied.

The petitioner states that it is in the business of construction and seeks to employ the beneficiary as a mechanical 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 proffered position is not a specialty occupation. Counsel submits the petitioner's reasons for appeal on the Form I-290B, along with a brief.

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) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a mechanical engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter;

and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: researching, planning and designing mechanical and electromechanical products systems; directing and coordinating activities involved in fabrication, operation, application, installation, and repair of mechanical or electromechanical products and systems; researching and analyzing data, such as customer design proposal, specifications, and manuals to determine feasibility of design or application; and being involved in estimates, value engineering, cost analysis, project scheduling and implementation. Counsel indicated that the proffered position is a specialty occupation and that the beneficiary has the equivalent of a U.S. bachelor's degree.

In her decision, the director noted that she had requested additional evidence and that the petitioner responded to the director's request. The director found that the evidence submitted did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry as a mechanical engineer as it relates to the petitioner's business. The director found that the proffered position does not meet any of the above-mentioned criteria. The director stated that CIS must take into account the totality of the evidence, including a consideration of how the duties of the position relate to the petitioner's business and whether the petitioner can provide employment in the proffered position. The director noted that the position of a mechanical engineer may be considered a specialty occupation, but the record does not establish that the proffered position is a specialty occupation as it relates to the petitioner.

On appeal, counsel asserts that the duties of the proffered position are clearly specialized in their nature and responsibilities. Counsel states that the duties described are commonly performed by a mechanical engineer and therefore the proffered position is a specialty occupation.

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 states that it is seeking the beneficiary's services as a mechanical engineer at its office in Lake Worth Florida. The Form I-129 indicates that the petitioner was established in 2004 and is in the business of construction. The petitioner indicates that it estimates that it will have one employee. The petitioner submitted a virtual tenant agreement with Gateway Executive Quarters, Inc. located in Palm Beach Gardens, Florida.

The petitioner has provided no information about its business except the information found on the Form I-129 indicating that it is a construction business. The petitioner has not described the field or industry in which it works such as what type of construction. It is unclear if the petitioner is involved in manufacturing machinery, transportation equipment, computer and electronics products or fabricated metal products. The petitioner stated that the beneficiary would be researching, planning and designing mechanical and electromechanical products; however, the petitioner does not further elaborate on the type of products. The petitioner states that the beneficiary would be directing activities involved in the fabrication, operation, application, installation and repair of mechanical and electromechanical products and systems without describing the products or systems. Going on record without supporting documentary evidence is not

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has not described where the fabrication would take place. The petitioner submitted a virtual tenant agreement for office space in Palm Beach Gardens. The petitioner indicated that its place of business is in Lake Worth on the Form I-129 and the Form ETA 9035E Labor Condition Application. The petitioner has not established that the position actually requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner has not established that the beneficiary will be employed in the profession of mechanical engineer upon entering the United States. The petitioner has not established that the proffered position is one of a mechanical engineer.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO prefaces its analysis by noting that the record lacks evidence of specific projects and specific tasks and an explanation from the petitioner indicating that such tasks would require the theoretical and practical application of a bachelor's degree level of highly specialized engineering knowledge. The descriptions of the proposed duties are exclusively generic and do not persuade the AAO that their actual job performance would require more than the level of knowledge usually associated with the duties of engineering technicians.

The AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by engineering technicians. As discussed in the *Handbook*, engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Many engineering technicians assist engineers and scientists, especially in research and development. The *Handbook* further specifies:

Mechanical engineering technicians help engineers design, develop, test, and manufacture industrial machinery, consumer products, and other equipment. They may assist in product tests—for example, by setting up instrumentation for auto crash tests. They may make sketches and rough layouts, record and analyze data, make calculations and estimates, and report on their findings. When planning production, mechanical engineering technicians

prepare layouts and drawings of the assembly process and of parts to be manufactured. They estimate labor costs, equipment life, and plant space. Some test and inspect machines and equipment or work with engineers to eliminate production problems.

The *Handbook* reports the following about the training requirements for engineering technicians:

Although it may be possible to qualify for a few engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology.

The petitioner fails to establish the first criterion because the *Handbook* states that employers of engineering technicians prefer, but do not require, applicants with bachelor's degrees with an engineering emphasis. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner provided no evidence to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree as required by the second alternative prong of the second criterion.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. On appeal, counsel contends that the beneficiary will research and design mechanical and electromechanical products. The record contains no evidence of designing products or even a description of a product. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not differentiated the duties of the proffered position from those normally found in an engineering technician position. To the extent they are described in the record, the duties do not appear so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that the proffered position is performed by an engineering technician, an occupation that does not require a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.