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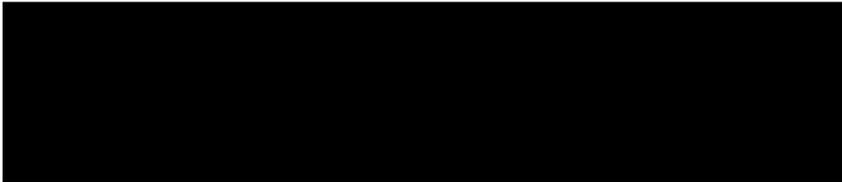
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: LIN 05 144 53238 Office: NEBRASKA SERVICE CENTER Date: JUL 16 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

for *Michael T. Kelly*
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 is a flooring business that seeks to employ the beneficiary as a materials 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The petitioner, a flooring company with twenty employees, was established in 1995. According to the Form I-129, it has a gross annual income of over one million dollars. In a letter attached to its March 23, 2005 letter of employment, the petitioner stated that the duties of the proposed position would include analyzing product failure data and laboratory test results in order to determine the causes of problems and develop solutions; conducting or supervising tests on raw materials or finished products in order to ensure their quality; designing and directing the testing and/or control of processing procedures; determining the appropriate methods for fabricating and joining materials; evaluating technical specifications and economic factors relating to process or product design objectives; monitoring material performance and evaluating material deterioration; planning and implementing laboratory operations for the purpose of developing material and fabrication procedures that meet cost, product specification, and performance standards; reviewing new product plans and making recommendations for material selection based on design objectives, such as strength, weight, heat resistance, electrical conductivity, and cost; solving problems in a number of engineering fields, such as mechanical, chemical, electrical, civil, nuclear, and aerospace; and supervising the production and testing processes in industrial settings such as metal refining facilities, melting or foundry operations, or non-metallic materials production operations.

According to the petitioner’s August 23, 2005 response to the director’s request for additional evidence, the duties of the proposed position would include providing analysis, technical data, and suggestions for products that the petitioner will be using; presenting technical support and testing results in a timely manner for pending negotiations and ongoing projects; sampling new types of floors; testing new materials; creating new floors, moldings, and accessories (such as thresholds, reducers, and vents); working with the contracts and data departments to keep information up-to-date; following-up with results from the beneficiary’s tests and inspections; working as part of a team of 2-8 persons, with the role of directing and supervising installations and coating applications on time and according to the material’s specifications; conducting structural inspections at the client location for glue-down installations, particularly regarding the acceptability limits of restarting installations; and setting and using the petitioner’s tools and machines, making adjustments, repairs, and conducting required maintenance.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. In denying the petition, the director held that the duties of the proposed position were essentially those of carpet, floor, and tile installer and finisher. On appeal, the petitioner contends that the director erred in denying the petition. Specifically, the petitioner contends that the director relied upon “just the part that points to the Installer position, excluding the more technical and scientific tasks.”

In determining whether a proposed 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. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* notes that, generally, engineers "apply the principles of science and mathematics to develop economical solutions to technical problems." When developing new products, they consider many factors. "Their work is the link between perceived social needs and commercial applications."

The 2006-2007 edition of the *Handbook* states the following with regard to the employment of material engineers:

Materials engineers are involved in the development, processing, and testing of the materials used to create a range of products, from computer chips and television screens to golf clubs and snow skis. They work with metals, ceramics, plastics, semiconductors, and composites to create new materials that meet certain mechanical, electrical, and chemical requirements. They also are involved in selecting materials for new applications. Materials engineers have developed the ability to create and then study materials at an atomic level, using advanced processes to replicate the characteristics of materials and their components with computers. Most materials engineers specialize in a particular material. For example, metallurgical engineers specialize in materials such as steel, and ceramic engineers develop ceramic materials and the processes for making ceramic materials into useful products such as glassware or fiber optic communication lines.

The duties proposed here do not rise to the level of those performed by materials engineers. While a small portion of the proposed duties involve the designing of new flooring products, there is no indication that he would be developing any of the underlying materials of which his flooring products would consist. Rather, as established by the record, he would take existing materials, such as wood and stain, as well as other finishes, and test them for durability, abrasion resistance, etc. There is no indication that the beneficiary would be creating and studying anything at an atomic level.

Nor is there any evidence in the record to support the petitioner's contention that the beneficiary would be solving nuclear engineering problems or that he would be working in metal refining and foundry operations.

Accordingly, the AAO agrees with the director that the duties proposed for the beneficiary are not those of a materials engineer. Rather, the AAO has compared the duties of the proposed position to a variety of occupations profiled in the *Handbook* and determined that they combine the duties of engineering technicians and experienced carpet, floor, and tile installers and finishers.

Regarding the duties of engineering technicians, the *Handbook* states the following:

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. Their work is more limited in scope and application-oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests, or collecting data. In manufacturing, they may assist in product design, development, or production. Although

many workers who repair or maintain various types of electrical, electronic, or mechanical equipment are called technicians, these workers are covered in the *Handbook* section on installation, maintenance, and repair occupations.

Regarding the duties and responsibilities of carpet, floor, and tile installers and finishers, the *Handbook* provides the following information:

Carpet, tile, and other types of floor coverings not only serve an important basic function in buildings, but their decorative qualities also contribute to the appeal of the buildings. Carpet, floor, and tile installers and finishers lay these floor coverings in homes, offices, hospitals, stores, restaurants, and many other types of buildings. Tiles may also be installed on walls and ceilings.

The AAO finds that the duties of the proposed position as set forth in this petition combine the duties of these two occupations. Accordingly, the AAO turns to the *Handbook's* discussion of the educational qualifications necessary for entry into these two fields. The *Handbook's* discussion of the minimum entry qualifications required for engineering technicians states the following:

Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, and public and private vocational-technical schools, and in the Armed Forces. Persons with college courses in science, engineering, and mathematics may qualify for some positions but may need additional specialized training and experience. Although employers usually do not require engineering technicians to be certified, such certification may provide jobseekers a competitive advantage.

Prospective engineering technicians should take as many high school science and math courses as possible to prepare for postsecondary programs in engineering technology. Most 2-year associate degree programs accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET) require, at a minimum, college algebra and trigonometry, and one or two basic science courses. Depending on the specialty, more math or science may be required.

Thus, an engineering technician is not required to have a baccalaureate degree or its equivalent in order to enter the field.

Regarding the minimum entry qualifications required for carpet, floor, and tile installers and finishers, the *Handbook* states the following:

The vast majority of carpet, floor, and tile installers and finishers learn their trade informally on the job. A few, mostly tile setters, learn through formal apprenticeship programs taking nearly 3 years to complete, which include on-the-job training as well as related classroom instruction.

Thus, a carpet, floor, and tile installer and finisher is not required to have a baccalaureate degree or its equivalent in order to enter the field.

Accordingly, the proposed position does not qualify as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no such evidence has been submitted. Thus, the petitioner has failed to satisfy the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to the engineering technician and carpet, floor, and tile installers and finisher positions outlined in the *Handbook*, which do not require a four-year degree as a minimum entry requirement. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions not requiring at least a baccalaureate degree in a specific specialty. Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

While the petitioner states on appeal that forty percent of its employees have degrees, it has submitted no evidence to establish that it has, in the past, required applicants for this position to possess a baccalaureate degree, or its equivalent. Thus, it has not established eligibility under this criterion. Moreover, the petitioner indicates on appeal that this is a newly-created position, for which it has never hired anyone, which would also preclude eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously

discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree for engineering technician and carpet, floor, and tile installers and finisher positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than the duties typical to those of the aforementioned positions, for which the *Handbook* indicates no usual association with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.