

identifying data deleted to  
prevent identity unwarranted  
invasion of personal privacy

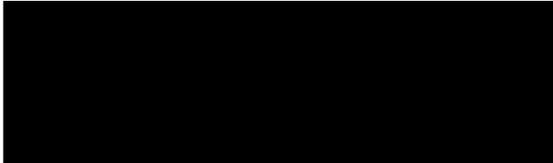
U.S. Department of Homeland Security  
20 Massachusetts Avenue NW, Room 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

81

**PUBLIC COPY**



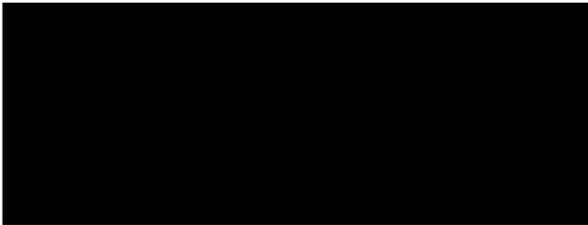
FILE: EAC 06 134 53714 Office: VERMONT SERVICE CENTER Date: OCT 05 2007

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.

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 hotel that seeks to employ the beneficiary as a chemical 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 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.

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, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

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.

In its March 23, 2006 letter of support, the petitioner stated that it needed to employ a chemical engineer. According to the petitioner, the duties of the proposed position would include controlling the purchase of required chemicals and ensuring that those chemicals are kept in a safe and controlled environment; preparing material, cost, and timing estimates; designing and controlling maintenance routines; ensuring that the petitioner’s personnel comply with specifications and procedures in order to guarantee quality; ensuring that chemical formulations are followed; and preparing maintenance reports.

In his April 13, 2006 request for additional evidence, the director stated that the evidence submitted by the petitioner had not established that the proposed position qualifies for classification as a specialty occupation. The director requested, among other items, a detailed statement articulating the beneficiary’s proposed duties and day-to-day responsibilities. This description was to indicate the percentages of time to be spent performing the various responsibilities each day. It was also to indicate which specific tasks require the experience of an individual with a bachelor’s degree, and how the beneficiary’s education relates to the proposed position itself. The director also requested that the petitioner provide the number of other individuals it currently employs as chemical engineers, as well as how many individuals it has employed as chemical engineers in the past two years.

In its June 12, 2006 response to the director’s request for additional evidence, the petitioner stated that it is currently in the process of installing a swimming pool and, since it did not have a swimming pool in the past, it never needed a chemical engineer. The petitioner stated that it needed a chemical engineer “to ensure compliance with specifications and procedures with the laws of the State of New York,<sup>1</sup> and to ensure [that] chemical formulations are followed for a safe product.” The petitioner did not, as requested, submit a detailed statement articulating the beneficiary’s proposed duties and day-to-day responsibilities, along with the percentages of time to be spent on a daily basis performing the various tasks. Rather, the petitioner repeated, verbatim, the list of duties it had provided in its letter of support, which the director had specifically advised did not warrant classification as a specialty occupation.

The director denied the petition on July 5, 2006, finding that the petitioner had failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. Specifically, the director found that, while the beneficiary is qualified to perform the duties of a chemical engineer, “duties involving pool maintenance and the storage and maintenance of pool chemicals are not so specialized as to require a minimum of a bachelor’s degree in a specific field of study.”

In his July 26, 2006 appellate brief, counsel contends that the director erred in denying the petition. Counsel asserts, as did the petitioner, that it needs the services of a chemical engineer “to ensure

---

<sup>1</sup> The petitioner is located in Roanoke, Virginia, so it is unclear to the AAO why the petitioner would need to be in compliance with New York regulations.

compliance with specifications and procedures with the laws of the State of New York, and to ensure [that] chemical formulations are followed for a safe product." Again, it is unclear to the AAO why the petitioner would need to comply with the regulations of the State of New York, as the petitioner and job location are both in Roanoke, Virginia. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel also asserts the following:

The employer is unable to accommodate their guest[s] with the ability to utilize the pool without insuring their safety as to the requirements of the law. They desperately need a Chemical Engineer.

However, the record contradicts counsel's assertion. At the time the petition was filed, the petitioner submitted a company brochure detailing its services. The brochure contains a picture of the petitioner's pool, which appears fully completed, as the pool is full of water, the pool area is fully furnished, and has posted operating hours. The brochure also advises guests that the pool's maximum operating capacity is 19 persons, that children may not use the pool unsupervised, and that guests must shower before entering the pool. It also informs guests that the pool is "open all seasons." Thus, it appears that the petitioner's pool was fully operational as of April 3, 2006, the date the petition was received. Clearly, therefore, someone has been performing the duties proposed for the beneficiary.

Counsel also states that "[t]he Service relies and limits the 'Duties' to generalities." However, the director was simply repeating the general list of duties provided by the petitioner. The director afforded the petitioner the opportunity to provide a more detailed job description in his request for additional evidence but, as noted previously, the petitioner elected to simply repeat the list of duties it had already submitted. Therefore, counsel's assertion fails.

The AAO agrees with the director's findings. 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.

Although the *Handbook* indicates that a position as a chemical engineer normally qualifies for classification as a specialty occupation, the record does not establish that, in this case, the beneficiary will be employed as a chemical engineer. Counsel and the petitioner have limited their descriptions of the proposed duties to exclusively vague terms that convey neither the content of the work that the beneficiary would actually perform nor that the actual work performance would involve the theoretical and practical application of a bachelor's degree-level of knowledge in a specific specialty, as required by the statute and regulations to establish a proposed position as a specialty occupation.

For example, the job description of record indicates that the beneficiary would ensure compliance with state regulations, control the purchase of chemicals, preparing estimates and maintenance reports, ensuring chemical formulations, and designing maintenance routines.

Such a description of the duties consists of generalized functions that do not establish the level of knowledge that would be required when they are actually performed in the context of the petitioner's business matters.

A petitioner cannot establish its employment as a specialty occupation by simply describing the duties of that employment in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., a chemical engineer applies the principles of chemistry to solve problems. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. The record as presently constituted lacks substantive information about the specific work and the associated knowledge requirements of the particular position that the petitioner is proposing. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. Otherwise, the petition lacks a reasonable basis for the AAO to evaluate the merits of the petitioner's claim that the beneficiary will perform work that requires the theoretical and practical application of a body of highly specialized knowledge in a specific field and the attainment of a bachelor's degree or higher, or its equivalent, in a specific specialty, as required by statute and CIS regulations.

Further, the AAO notes that in this particular case the petitioner was placed on notice by the director that he wished to obtain a more detailed description of the job duties proposed for the beneficiary, including a breakdown of the percentages of time to be spent performing his daily tasks. Such information was particularly warranted in this case, as it does not appear likely that the petitioner, a 123-room hotel, would be able to provide the beneficiary with thirty-five hours per week of employment as a chemical engineer. The petitioner, however, elected not to provide this information. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Nor did the petitioner provide, as requested, the names of employees, along with their educational backgrounds, who have held similar positions in the past. The petitioner stated that it was in the process of installing a pool and that, since it did not have one previously, never needed the services of a chemical engineer. However, as noted previously, the record indicates that the petitioner did in fact have an operational pool at the time the petition was filed. Thus, the duties proposed for the beneficiary were performed by someone, but the petitioner opted not to respond to that portion of the director's request for evidence as well. Again, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Accordingly, the AAO finds that the petitioner has not established the proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(A) – that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular 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 is 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. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations. However, the petitioner submitted no such evidence. In response to the director's request for additional evidence, the petitioner stated that it was "not aware of other companies that do or do not employ a Chemical Engineer." Accordingly, the petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For reasons already set forth in this decision, particularly the petition's deficiencies and generalities, the nature of the duties of the proposed position as set forth in the petition does not support such a finding. To the limited extent that they are described, the proposed duties do not indicate the complexity and uniqueness required by this criterion.

Therefore, counsel 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. However, this is a newly-created position, which precludes approval under the third criterion. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO incorporates here its previous discussion regarding the petition's deficiencies and generalities. Again, to the limited extent that they are described, the proposed duties do not indicate the specialization and complexity required by this criterion. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the proposed position qualifies 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). 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.