

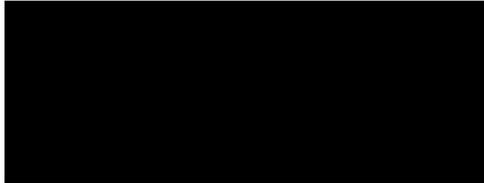
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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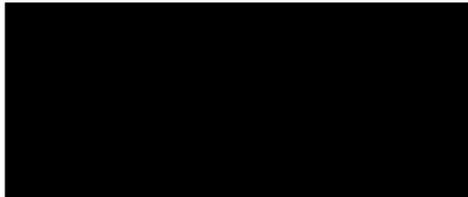
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FILE: EAC 05 204 50647 Office: VERMONT SERVICE CENTER Date: OCT 05 2007

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides consulting and management services to hotels and motels in Pennsylvania. It claims to employ 15 individuals and to have \$1,164,500 in gross annual income. It seeks to employ the beneficiary as a maintenance engineer. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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, determining that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner asserts that the proffered position requires a bachelor's degree and that the director's decision is in error.

The record of proceeding before the AAO contains: (1) the Form I-129 filed July 6, 2005 with supporting documentation; (2) the director's November 18, 2005 request for additional evidence (RFE); (3) counsel for the petitioner's January 12, 2006 response to the director's RFE; (4) the director's July 6, 2006 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the 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.

The petitioner seeks the beneficiary's services as a maintenance engineer. Evidence of the beneficiary's duties includes the petitioner's July 1, 2005 letter in support of the petition. The petitioner outlined the job duties of the position as including but not limited to:

- Plans, develops, and conducts tests on industrial processes and systems
- Apply knowledge and principles of industrial, electrical and electronic theory, testing methodology and procedures
- Develop or use industrial systems and processes to conduct tests and perform maintenance on health and safety issues as well as electrical and electronic products and systems
- Test and maintain integrated electrical and electronic and computer systems for managing business processes including human work force factors, quality control, inventory control and cost analysis
- Support and maintenance of EP ABX telephone systems, air conditioning and heating systems
- Support of Programmable Logic Controllers (PLC)
- Test and support of Electrical [C]ontrols, Electrical Panels, PCB Assembly, Power Electronics

In response to the director's RFE, the petitioner rephrased the description of duties, in part, and added the percentage of time the beneficiary would spend on various duties as:

- Develop or use commercial systems and processes to conduct tests and perform maintenance on electrical and electronic products and systems – 25%
- Test and maintain integrated electrical and electronic and computer systems for managing business processes including human work force factors, quality control, inventory control and cost analysis – 25%
- Support and maintenance of EP ABX telephone systems, air conditioning and heating systems – 25%

- Support of Programmable Logic Controllers (PLC) – 15%
- Test and support of Electrical [C]ontrols, Electrical Panels, PCB Assembly, Power Electronics – 10%

The petitioner also noted its need for a "maintenance engineer to conduct tests and provide maintenance and support on electronic and electrical components, products, and systems, such as appliances, generators, transformers, control devices, and relays as well as computer systems, applying knowledge and principles of industrial and electronic theory, testing methodology and procedures and industrial health and safety laws."

The petitioner stated that it employed two managers who have bachelor's degrees: (1) a general manager in charge of personnel and general management who has a bachelor's degree in psychology; and (2) a budget and operations manager who has a bachelor's degree in accounting. The petitioner provided copies of the individuals' resumes.

Counsel for the petitioner referenced the Department of Labor's (DOL) *Occupational Outlook Handbook's* (*Handbook*) discussion of industrial engineers and indicated that the beneficiary would work to promote worksite or product safety by applying knowledge of industrial processes and asserted this clearly established the proffered position as a specialty occupation. Counsel also referenced the DOL's *Dictionary of Occupational Titles* (*DOT*) and noted that the *DOT* required an industrial engineer to have a specific vocational preparation (SVP) rating of 7, a rating that suggested the individual in such a position would have college-level training and work experience in the field.

On July 6, 2006, the director denied the petition. The director noted that the petitioner's description of duties included testing and maintenance and that the petitioner's business involved owning and providing consulting and management services to hotels and motels. The director determined, upon review of the duties of the position and the nature of the petitioner's business, that the position most closely corresponded to the position of a maintenance and repair worker, an occupation that did not require a bachelor's degree. The director noted the petitioner's employment of two individuals with bachelor's degrees but found that their positions were not parallel to the proffered position. The director also noted that the petitioner had not provided evidence of an industry-wide standard for a bachelor's degree in a specific discipline for the proffered position. The director concluded that the petitioner had not established the proffered position incorporated the duties of a specialty occupation.

On appeal, counsel for the petitioner references the *Handbook's* discussion of industrial and mechanical engineers and asserts the beneficiary would be performing duties that correspond to the *Handbook's* discussion of these occupations. Counsel notes that the *Handbook* indicates that a bachelor's degree in engineering is required for almost all entry-level engineering jobs and that engineers trained in one branch [of engineering] may work in related branches. Counsel takes issue with the director's determination that the beneficiary would be performing the duties of a maintenance and repair worker and asserts there is a vast difference between the duties of an engineer and of a maintenance/repair worker. Counsel notes that the petitioner indicated in a statement preceding its description of duties that the job duties of the position were not limited to the duties described. Counsel contends that the job description is not meant to be an exhaustive list of job duties but only an indication of the kind of work the beneficiary would be performing. Counsel contends, in addition, that the petitioner's services to clients to enable management of their facilities, auditing, operations, and communications through their various electrical, electronics and computer systems require an employee who is qualified and has the ability, training,

and educational qualifications to function and perform independently. Counsel asserts the proffered position is a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not 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 AAO agrees that there is a difference between the occupations of an engineer and a maintenance and repair worker. However, the petitioner must provide a comprehensive description of duties to enable the adjudicator to determine whether the position incorporates the duties of an engineer or of a maintenance worker. In this matter, the AAO will review the general description of the duties of the proffered position in an effort to ascertain whether the duties of the position comport with those of an industrial or mechanical engineer, occupations considered specialty occupations.

The 2006-2007 edition of the *Handbook* indicates that "[e]ngineers apply the principles of science and mathematics to develop economical solutions to technical problems." The *Handbook* discusses the employment of industrial engineers as follows:

Industrial engineers determine the most effective ways to use the basic factors of production – people, machines, materials, information, and energy – to make a product or to provide a service. They are mostly concerned with increasing productivity through the management of people, methods of business organization, and technology. To solve organizational, production, and related problems efficiently, industrial engineers carefully study the product requirements, use mathematical methods to meet those requirements, and design manufacturing and information systems. They develop management control systems to aid in financial planning and cost analysis, and design production planning and control systems to coordinate activities and ensure product quality. They also design or improve systems for the physical distribution of goods and services, as well as determine the most efficient plant locations. Industrial engineers develop wage and salary administration systems and job evaluation programs. Many industrial engineers move into management positions because the work is closely related to the work of managers.

The 2006-2007 edition of the *Handbook* reports the duties of a mechanical manager include the following:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines, as well as power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work. 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.

The 2006-07 edition of the *Handbook* reports that the duties of a maintenance/repair worker include:

[General maintenance and repair workers] repair and maintain machines, mechanical equipment, and buildings and work on plumbing, electrical, and air-conditioning and heating systems.

* * *

They also maintain and repair specialized equipment found in cafeterias, laundries, hospitals, stores, offices, and factories. Typical duties include troubleshooting and fixing faulty electrical switches, repairing air-conditioning motors, and unclogging drains.

* * *

General maintenance and repair workers inspect and diagnose problems and determine the best way to correct them, frequently checking blueprints, repair manuals, and parts catalogs.

* * *

General maintenance and repair workers also perform routine preventive maintenance and ensure that machines continue to run smoothly, building systems operate efficiently, and the physical condition of buildings does not deteriorate.

The petitioner's description does not correspond to the duties of an industrial engineer as described in the *Handbook*. The petitioner does not describe: the mathematical methods the beneficiary would use to design manufacturing and information systems; the tasks required to develop management control systems or to design production planning and control systems; or the petitioner's projects that require physical distribution of goods and services or plant locations. Further, the petitioner does not describe the tests the beneficiary would conduct, does not identify the testing methodology to be used, and does not provide examples of projects that require the application of knowledge and principles of industrial, electrical, and electronic theory. The petitioner has provided a general overview of a position without the comprehensive details necessary to demonstrate that the tasks involved include the theoretical and practical application of a body of highly specialized knowledge evidenced by the attainment of a bachelor's or higher degree in a specific specialty.

The AAO acknowledges counsel's assertions that (1) testing and maintaining integrated electrical and electronic and computer systems for managing business processes including human work force factors, quality control, inventory control and cost analysis is a duty similar to the *Handbook's* general statement that industrial engineers carefully study the product requirements, use mathematical methods to meet those requirements, and design manufacturing and information systems; and (2) supporting and maintaining EP ABX telephone systems, air conditioning and heating systems and supporting Programmable Logic Controllers are duties similar to the *Handbook's* general statement that industrial engineers develop management control systems to aid in financial

planning and cost analysis, and design production planning and control systems to coordinate activities and ensure product quality. However, the petitioner does not provide examples of the methods the beneficiary would use to determine and satisfy product requirements, does not indicate the beneficiary's tasks are related to designing systems, and does not identify the problems the petitioner faces as regards quality control, inventory control, cost analysis or human work force factors. Most importantly, the petitioner prefaces this duty with the words "test" and "maintain," words that connote preventive tasks used to ensure that the systems run smoothly and operate efficiently, tasks associated with a skilled maintenance worker position. Neither does the petitioner discuss: the tasks associated with developing control systems; the technical problems it and its clients face with regard to EP ABX telephone systems, air conditioning and heating systems, and Programmable Logic Controllers; or the methods the beneficiary will use to find solutions to any technical issues. Again, the petitioner prefaces these duties with the words "support" and "maintain," words that suggest the duties involve routine oversight and maintenance of these systems. The AAO finds that the petitioner's general statements do not correspond to the duties of an industrial engineer but rather suggest that the individual in the proffered position would perform services related to the maintenance of the electrical, electronic, and computer systems and EP ABX telephone systems, air conditioning and heating systems, and Programmable Logic Controllers of the petitioner and its clients.

Likewise, the petitioner's description does not correspond to the duties of a mechanical engineer as described in the *Handbook*. The AAO notes counsel's emphasis on the *Handbook's* general statements regarding mechanical engineers and their duties associated with development, design and testing of tools, engines, machines and other mechanical devices as well as the *Handbook's* note that mechanical engineers may work in maintenance. As reported in the *Handbook*, however, both the positions of mechanical engineer and of a maintenance worker include maintenance duties and work on mechanical equipment. Moreover, neither the petitioner nor counsel describe the particular tasks the beneficiary would be expected to perform for the petitioner or its clients that involve development and design of mechanical devices or the testing of prototypes resulting from the development and design of mechanical devices. Further, the petitioner does not provide examples of maintenance of machines or mechanical devices that require specialized knowledge associated with a four-year course of study at the university level. The petitioner has not established that the position is that of a mechanical engineer.

The petitioner's general description of the proffered position does not provide sufficient information regarding the actual duties of the position to establish that the duties are those of either an industrial or a mechanical engineer. A petitioner cannot rely on general statements such as those described in *Handbook* when discussing the duties attached to specific employment. When 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.

The AAO acknowledges counsels reference to the *DOT* and on appeal the *DOT's* discussion of "test engineers." However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and

experience and it does not specify the particular type of degree, if any, that a position would require. The record does not support counsel's implication on appeal that the position includes the duties of a "test engineer" and does not establish that the occupation as described requires the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO further acknowledges the petitioner's indication that the list of described duties is not meant to be an exhaustive list of the duties it expects the individual in the proffered position to perform. However, a petitioner must provide enough substantive detail to enable an adjudicator to determine whether the position is that of an engineer or of a skilled technician. The list of duties provided is too general to demonstrate that the duties incorporate the theoretical and practical application of a body of highly specialized knowledge that requires the 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. References to the general responsibilities of an occupation and a claim that the responsibilities are those of an industrial or mechanical engineer without providing the underlying detail of the tasks in relation to the petitioner's specific business does not establish that the duties are those of either occupation, or are the duties of a specialty occupation. Again, the petitioner in this matter fails to describe what the beneficiary will face in terms of its "engineering" problems and how the individual in the position must have a university-level education to solve those problems. 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)).

Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS, however, must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations. The AAO finds that the petitioner has not described employment that includes the tasks of an industrial or mechanical engineer. With the lack of detail regarding the actual daily tasks of the proffered position, the AAO is unable to determine that the tasks of the proffered position are of sufficient complexity to require the minimum of a baccalaureate or higher degree or its equivalent in a directly related specialty. As the record in the instant matter does not offer a meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of a specialty occupation. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner does not offer evidence that the

hotel/motel industry has made a degree a minimum entry requirement for the position of a "maintenance engineer" as generally described in this matter, nor does the petitioner offer letters or affidavits from firms or individuals in the industry attesting 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*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The record does not contain evidence of an industry-wide education standard for hotel/motel/hospitality maintenance engineers as required to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative the petitioner may offer evidence to establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. In this matter, the AAO finds again that the description of the duties is too general to determine that the proffered position incorporates such complex or unique elements that only a degreed individual in a specific discipline could perform the duties of the position. The petitioner has not established that the proffered position is a specialty occupation by distinguishing the position from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - whether the employer normally requires a degree or its equivalent for the position. The AAO usually 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. In this matter, the petitioner has not provided evidence that it previously hired an individual to fill the position of maintenance engineer. The AAO acknowledges the petitioner's claim that it requires its key employees to hold bachelor degrees. However, while a petitioner may believe that a proffered position requires a degree or may want the position to be filled by an individual with a degree, the petitioner's opinion and desire do not establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) - whether the nature of the specific 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. The AAO here incorporates this decision's earlier comments about the record's lack of evidence about specific work that the beneficiary would perform. Again, the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. Without a meaningful list of duties related to its specific business operations, a petitioner may not establish that such duties are either specialized or complex. Contrary to counsel's assertion, the record does not contain documentary evidence that the duties of the proffered position contain elements significantly different from that of a skilled maintenance worker, an occupation whose performance neither requires nor is usually associated with a bachelor's degree in a specific discipline. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical skilled maintenance technician.

Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reason. As always, 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 met that burden.

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