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**U.S. Citizenship and Immigration Services**

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FILE: SRC 03 250 54622 Office: TEXAS SERVICE CENTER Date: JAN 05 2005

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 owns six Italian pizza shops and restaurants 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 position is not a specialty occupation. On appeal, counsel states that the proffered position is a specialty occupation and submits further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated September 25, 2003; (4)

the petitioner's response to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. 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 I-129 petition; and the petitioner's letter in response to the director's request for further evidence. According to the petition, the beneficiary would plan and design mechanical products and systems. In its letter of support, the petitioner stated the beneficiary would plan and design mechanical and electromechanical products and systems; direct and coordinate activities involved in operation, applications, installation, and repair of mechanical or electromechanical systems; research and analyze data, such as design proposal, specifications, and manuals to determine feasibility of design or application; direct and coordinate fabrication and installation activities to ensure products and systems conform to engineering design and specifications; coordinate operation, maintenance and repair activities to obtain optimum utilization of machines and equipment at the petitioner's restaurants.

In its response to the director's request for further evidence, the petitioner explained that he had five restaurants in the Houston area with air conditioning, heating and ventilation systems, coolers, and freezers. The petitioner stated that problems with the equipment makes the restaurant business suffer, and can lead to other health problems, such as food poisoning. Based on the flawed initial design of the duct systems in the petitioner's restaurants, the beneficiary would design new and efficient ducts to replace the existing ones, and he would analyze and research data for optimum design and performance. The beneficiary would also troubleshoot and ultimately redesign other areas. The petitioner referred to the importance of having a mechanical engineer available to troubleshoot problems, and mentioned his inability to get service for a malfunctioning thermostat that had caused the closure of one of the petitioner's restaurants by the health department. The petitioner also stated that a new shopping center would require a new design and maintenance plan to keep it properly running. The petitioner stated that it required a candidate for the position to possess a baccalaureate degree in mechanical engineering.

The director denied the petition and stated that the duties of the position did not require a mechanical engineer, especially in regard to the maintenance of the restaurant's air conditioning and heating systems. The director determined that the petitioner's statement with regard to a technician not being trained and educated enough to create and redesign a ventilation and cooling system was not persuasive. Finally the director stated that a petitioner's desire to acquire a higher caliber of employee, or to reduce his maintenance and repair expenses was not an adequate basis for establishing that a proffered position is a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation based on the duties outlined by the petitioner in its letter of support. Counsel asserts that the duties of a mechanical engineer and a technician are distinct and submits excerpts from Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and *Dictionary of Occupational Titles (DOT)* on mechanical engineers, heating and air-conditioning mechanics, and refrigeration mechanics. Counsel also cites to a prior AAO decision with regard to a mechanical engineering position that involved the design of ducts. Counsel submits a letter from [REDACTED] an electrical/mechanical engineer. [REDACTED] so examines the duties of the job as outlined by the petitioner and states that the position requires the depth and knowledge of an engineer and not a technician.

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

The AAO turns first to 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 *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While the *Handbook* clearly establishes that a mechanical engineer is a specialty occupation, the evidence provided by the petitioner does not sufficiently establish that the proffered position is actually a mechanical engineer position. While the petitioner stated that the position would involve design work for new ducts in its restaurant, he also identified other duties as troubleshooting, repair, and maintenance of heating, ventilation, and air conditioning equipment. These latter duties do not conform to the duties of mechanical engineers. The *Handbook* classification of sheet metal workers and ducts installers, suggest that while engineers may establish specifications for such equipment, HVAC technicians perform the maintenance, repair and installation duties. To the extent the beneficiary would not be working for an engineering firm, or a manufacturing industry, the proffered position does not appear to be that of a mechanical engineer.

In addition, the petitioner did not establish that the proffered position requires licensure, which is mandatory in all fifty states and the District of Columbia, when mechanical engineering services are provided to the public. State and local codes may require licensed mechanical engineers to perform the design work of an engineer. If a mechanical engineer is needed in this instance, the record does not establish that a license would not be required to perform the services. Any professional level engineering work to be done by the beneficiary may necessitate the possession of the proper licensure. It is noted that [REDACTED] who submitted an expert opinion to the record based on his work in the mechanical engineering field, is licensed to perform the duties of an electrical/mechanical engineer. Without more persuasive evidence, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to parallel positions in similar businesses, the petitioner provided no further documentation. The petitioner did not provide documentation from professional engineering associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The letter submitted by [REDACTED] does not establish an industry standard for the proffered position. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its petition that it has used outside maintenance services to repair and maintain the existing air-conditioning, heating, and ventilation systems. The proffered position is a new one. Therefore, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the duties of the position involve the reconfiguration, repair, and maintenance of existing physical systems. The petitioner provided no further detail on the size of the restaurants, and the complexity of installing a new duct system into an existing restaurant. While the petitioner stated that the employment of the beneficiary would be cost-effective, and efficient, these factors do not make the duties of the position so specialized or complex that the knowledge required to perform them would be associated with the attainment of a baccalaureate or higher degree. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.