

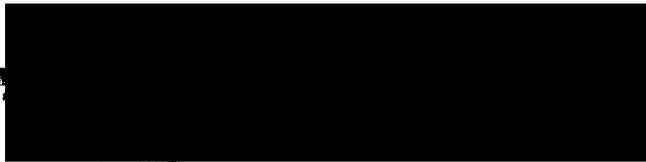
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



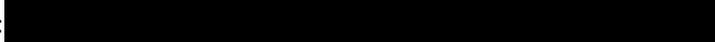
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D 7

FILE: WAC 04 026 51818 Office: CALIFORNIA SERVICE CENTER Date: MAY 05

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 materials 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 on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a provider of electrical products and supplies. It seeks to employ the beneficiary as a mechanical engineer and to classify him 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter from its president the petitioner described itself as an electrical supply company with twelve employees, gross annual income of \$5 million, and 600 regular customers. The letter explained that the petitioner is expanding its business to provide on-site power generation – including such equipment as transformers, generators and circuit breakers – for commercial, industrial, and residential users, and therefore needs a mechanical engineer to plan, redesign, test and complete the new equipment, implement quality control and inspection procedures, and coordinate nonconforming material plans. According to the petitioner the proffered position requires an engineering degree, preferably in mechanical engineering. The record indicates that the beneficiary was awarded a bachelor's degree in engineering, in the field of mechanical engineering, from the University of Technology in Teheran, Iran, on August 13, 1972.

In response to the RFE counsel submitted a more detailed explanation of the petitioner's business activities and the duties of the proffered position. As described by counsel, the petitioner offers a wide range of electrical products to electrical contractors serving the construction industry, as well as to industrial and commercial consumers. A typical project order includes transformers, generators, lamps, ballasts, wires and cables, wiring devices, conduits and fittings, and other equipment, counsel indicated, and a mechanical engineer was needed to design, test, and sometimes re-design the mechanical systems controlling the major electrical devices to ensure their proper operation and safety. The specific duties of the position were listed as follows:

- Redesigning and/or modifying equipment such as transformers, generators, and circuit breakers, according to proper mechanical specifications and safety requirements.
- Designing tools which make the repair and maintenance of the equipment safer, more effective, and more efficient.
- Modifying the mechanics of electrical systems to ensure safe conformance with the original engineering designs while meeting applicable performance specifications.
- Mechanically engineering the safe integration of electronics into equipment assemblies.
- Investigating customer's mechanical equipment failures and difficulties, diagnosing faulty operations, and making recommendations for a safer, more effective maintenance of equipment.
- Researching and analyzing data, such as customer specifications, equipment manuals, building requirements, and the likely power loads to determine the safest, most effective mechanical design and application to complete the project requirements.
- Developing procedures for testing equipment and conducting tests, as appropriate, on the complete system before delivery to the customer.
- Establishing and coordinating the maintenance and safety procedures, service schedule, and supply of materials required to maintain machines and equipment in the prescribed condition.
- Recommending design modifications to increase safety and efficiency, and eliminate machine or mechanical system malfunctions.

Additional documentation submitted in response to the RFE included evidence of the petitioner's business operations – such as photocopied federal and state income tax returns, payroll summaries (Forms W-2 and W-3), quarterly wage reports (Form DE-6), business licenses, and the company website – as well as a copy of the job announcement for the proffered position and a series of internet job postings for mechanical engineers, most of which required a baccalaureate degree in mechanical engineering.

In his decision the director found that the duties of the proffered position were closer to those of an engineering technician and/or an electrical and electronics installer and repairer, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which do not require a baccalaureate degree in a specific specialty and are not considered specialty occupations. The internet job postings for other mechanical engineering positions contained no information about the size of the advertising companies, the director indicated, making it impossible to determine whether those positions were parallel to the proffered position and from similar organizations to the petitioner. The director also found that the evidence failed to establish that the duties of the proffered position are so specialized and complex that they could only be performed by an individual with a specialty degree. The director concluded, therefore, that the proffered position did not qualify as a specialty occupation under the Act.

On appeal counsel asserts that the director erred in categorizing the proffered position as a combination engineering technician and electrical/electronics installer/repairer, in accordance with the *Handbook's* description of those occupations. Counsel quotes a *Handbook* excerpt on engineering technicians – “*Mechanical engineering technicians* help mechanical engineers design, develop, test, and manufacture industrial machinery, consumer products, and other equipment.” (*Handbook*, 2004-05 edition, at 144) – and states that this description does not fit the proffered position because the petitioner does not currently employ a mechanical engineer for whom a mechanical engineering technician could provide help. Counsel also distinguishes the proffered position from an electrical and electronics installer and repairer by emphasizing that the petitioner is seeking an engineer to work on the mechanics and mechanical portions of its equipment, not on the electronics or electrical portions of its equipment. Mechanical engineers are routinely hired for their expertise in the mechanical systems of electrical equipment, counsel contends, and quotes supporting language in the *Handbook*. The mechanical engineering position proffered by the petitioner, counsel asserts, is not only bona fide but essential for the petitioner to expand its business into larger-scale electrical projects. Also submitted on appeal is another internet job posting for a mechanical engineer to work on “power and cogeneration” projects, which counsel contends is exactly the same capacity in which the petitioner seeks to hire the beneficiary in this case.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

The AAO finds that the duties of the proffered position in this case accord with the *Handbook's* description of a mechanical engineer. That description reads, in pertinent part, as follows:

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. They

also develop 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 engineers work in many industries, and their work varies by industry and function. Some specialize in energy systems; applied mechanics; automotive design; manufacturing; materials; plant engineering and maintenance; pressure vessels and piping; and heating, refrigeration, and air-conditioning systems. Mechanical engineering is one of the broadest engineering disciplines

Handbook, 2004-05 edition, at 137-38. Based on the entire record, including the extensive documentation of the petitioner's business operations and the nature of the proffered position's duties, the AAO determines that the beneficiary will be performing the services of a mechanical engineer. The *Handbook* states that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. *See id.* at 126. The AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(C), the beneficiary must meet one of the following criteria to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As previously noted, the beneficiary earned a bachelor's degree in mechanical engineering from the University of Technology in Iran on August 13, 1972. The record includes a letter from an educational credentials evaluation service in Los Alamitos, California – Academic and Professional International Evaluations, Inc. – stating that the beneficiary's Iranian studies, which also included a two-year associate's degree in air conditioning systems from the same university, are equivalent to a bachelor of science in mechanical engineering from an accredited college or university in the United States. Accordingly, the AAO determines that the beneficiary is qualified to perform the services of the pertinent specialty occupation – mechanical engineer – in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

ORDER: The appeal is sustained. The petition is approved.