



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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invasion of personal privacy

File: WAC-99-067-51005

Office: California Service Center

Date: DEC 21 2001

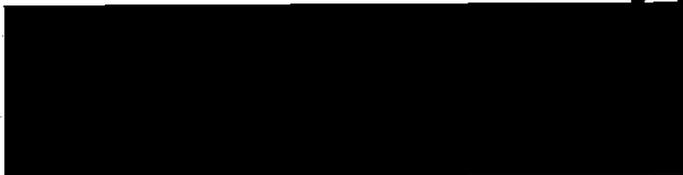
IN RE: Petitioner:  
Beneficiary:



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)

IN BEHALF OF PETITIONER:

Public Copy



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of aerospace structures and components with 15 employees and an estimated gross annual income of \$2 million. It seeks to employ the beneficiary as an engineer technician for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is with Boeing Corporation, a company that requires persons in its engineer technician position to have knowledge of mechanical engineering technology at the level equal to a baccalaureate degree.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Job duties entail; developing and testing aerospace machinery components and or equipment, applying knowledge of mechanical engineering technology while working under the direction of the engineering staff. Will review project instructions and blueprints to ascertain test specification, procedures, objectives, test equipment, nature of technical problem, and possible solutions, such

as, part redesign, substitution of material or parts, or rearrangements of parts or subassemblies. Will devise, fabricate, and assemble new or modified mechanical aerospace components or assemblies for products. Will conduct tests of complete aerospace mechanical components under operational conditions to investigate design proposals for improving equipment performance or other factors, or to obtain data for development, standardization, and quality control.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in mechanical engineering or a related field. Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations.

This type of information is currently furnished by the DOL in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

In its Handbook, 2000-2001 edition, at page 96, the DOL describes the job of an engineering technician as follows:

*Mechanical engineering technicians help engineers design, develop, test, and manufacture industrial machinery, mechanical parts, and other equipment. They may assist in testing a guided missile or planning and designing an electric power generation plant. They make sketches and rough layouts, record data, make computations, analyze results, and write reports. When planning production, mechanical engineering technicians prepare layouts and drawings of the assembly process and of parts to be manufactured. They estimate labor costs, equipment life, and plant space. Some test and inspect machines and equipment in manufacturing departments or work with engineers to eliminate production problems.*

The Handbook at pages 96-97 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an engineering technician. Most employers prefer to hire someone with at least a 2-year associate degree in engineering technology although some engineering technicians have no formal training. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, as well as through some training courses in the Armed Forces. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner has been in operation since 1989, it has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as mechanical engineering, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's argument that the company in which the beneficiary is to perform the proposed duties, Boeing Corporation, requires its engineering technicians to hold baccalaureate degrees in mechanical engineering, is noted. The record, however, contains no evidence supporting this assertion. It was held in Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. It is also noted that the record contains no evidence of the petitioner's contract with Boeing Corporation. (In light of Boeing's recent announcement of massive lay-offs, it is not certain that the proffered position still exists.)

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.