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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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ULLB, 3rd Floor
Washington, D. C. 20536



File: EAC-99-118-51841 Office: Vermont Service Center

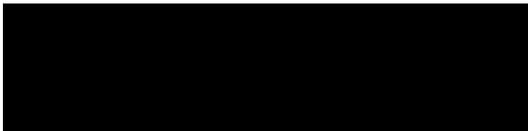
Date: NOV 20 2001

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, Acting 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 heating and refrigeration business which seeks to employ the beneficiary as a duct work designer for a period of three years. The director determined that the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement.

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 petitioner had failed to submit sufficient evidence to establish that the proffered position is a specialty occupation. On appeal, counsel contends that the proffered position is an engineering position and is therefore within the professions. Counsel asserts that the petitioner employs other individuals with baccalaureate degrees in the same job.

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 duties of the proffered position are described in pertinent part as follows:

- (a) Designs customized ducts for air conditioning projects;
- (b) Effective utilization of resources such as men, machines and materials;
- (c) Use principles of engineering to accomplish tasks;
- (d) Initiate and direct procedures to increase company output;
- (e) Do preventive maintenance activities, read blueprints, and follow plans to calculate casting; and
- (f) Determine feasibility of project based on analysis of collected data, applying knowledge and techniques of Engineering and Advanced Mathematics.

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, duct work designer, is an engineering position which would normally require a bachelor's degree in mechanical engineering or a related field. In these proceedings, the duties of the position are dispositive and not the job title. A thorough review of the record indicates that the proffered position appears to be that of an air-conditioning and refrigeration technician. The Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 edition, at pages 392-393, indicates in part that:

Air-conditioning and refrigeration technicians install and service central air-conditioning systems and a variety of refrigeration equipment. Technicians follow blueprints, design specifications, and manufacturers' instructions to install motors, compressors, condensing units, evaporators, piping and other components. They connect this equipment to the duct work, refrigerant lines, and electrical power source.

A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an air-conditioning and refrigeration technician:

Because of the increasing sophistication of heating, air-conditioning, and refrigeration systems, employers prefer to hire those with technical school or apprenticeship training. A sizable number of technicians, however, still learn the trade informally on the job. Many secondary and postsecondary technical and trade schools, junior and community colleges, and the Armed Forces offer 6-month to 2-year programs in heating air-conditioning, and refrigeration. Students study theory, design, and equipment construction, as well as electronics. They also learn the basics of installation, maintenance, and repair.

Second, while the petitioner claims that it has employed at least two individuals with baccalaureate degrees in the same position, it has not submitted any employee records relating to those individuals or photocopies of their academic credentials to corroborate this claim.

The petitioner claims it consulted with comparable companies such as Carrier, Lennox Heating and Cooling Systems, and Comfort Control Cooling and Heating, and all of those companies reported that they have similar requirements for the same job. However, the petitioner has not submitted a letter from any of those companies to substantiate this claim. Thus, the petitioner has not shown 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 with baccalaureate degrees 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding for the position of a duct work designer or air-conditioning and refrigeration technician. Therefore, the director's decision is affirmed.

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.