



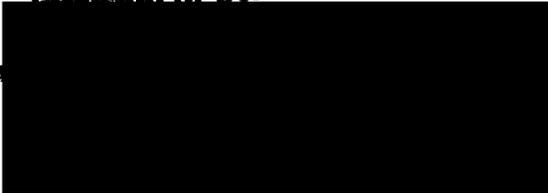
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



DEC 17 2002

File: LIN-01-192-53587

Office: Nebraska Service Center

Date:

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)

PUBLIC COPY

IN BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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 tooling gauges. It has 39 employees and a gross annual income of \$2.1 million. It seeks to employ the beneficiary as a CAD/CAM operator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's general manager 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 information submitted by the petitioner indicates that the proffered position requires a two-year degree in design drafting or two years of experience. On appeal, the petitioner's general manager states, in part, that the petitioner requires all of its CAD/CAM operators to hold baccalaureate degrees. He further states that the proposed duties are so specialized and complex that such a degree is required.

The petitioner'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:

1. CAD Design of Production Tooling...
2. Produce detailed mechanical drawing...
3. Demonstrated knowledge and experience in operation of CNC machining centers.
4. Demonstrated ability in Project Management.

5. Complete Job Binders with all information concerning the job, materials, problems, due/request dates, and any other pertinent information.

6. Miscellaneous Safety and Continuous Improvement projects...

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 the petitioner's argument that the proffered position would normally require a bachelor's degree in mechanical engineering or a related field. The proffered position appears to be that of a drafter. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 98, the Department of Labor (DOL) describes the job of a drafter, in part, as follows:

Drafters prepare technical drawings and plans used by production and construction workers to build everything from manufactured products, such as toys, toasters, industrial machinery, or spacecraft, to structures, such as houses, office buildings, or oil and gas pipelines.

Traditionally, drafters sat at drawing boards and used pencils, pens, compasses, protractors, triangles, and other drafting devices to prepare a drawing manually. Most drafters now use computer-aided drafting (CAD) systems to prepare drawings. Consequently, some drafters are referred to as CAD operators.

According to the DOL at page 99 of the Handbook, employers prefer applicants who have completed postsecondary school training in drafting, which is offered by technical institutes, community colleges, and some 4-year colleges and universities. Many technical institutes offer 2-year associate degree programs, which are similar to, or part of, the programs offered by community colleges or State university systems. (It is noted that at the time of filing, the petitioner stated that the proffered position requires a degree in design drafting and/or two (2) years of appropriate training or experience.) 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 established since 1980, it has provided evidence of hiring only two individuals with a baccalaureate or higher degree in a specific specialty such as mechanical engineering/aeronautical 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.

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.