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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



File: LIN-00-215-52297 Office: Nebraska Service Center Date: 04 FEB 2002

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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER: SELF-REPRESENTED

**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 hotel business with 30 employees and a projected gross annual income of \$1.5 million. It seeks to employ the beneficiary as a mechanical, heating, and cooling 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, the petitioner's president submits additional information.

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 were those of a heating, air-conditioning, and refrigeration technician, an occupation that does not require a baccalaureate degree. On appeal, the petitioner's president states, in part, that the proffered duties also include mechanical engineering duties such as researching, planning, and redesigning mechanical systems. He further states that the correct title of the position is mechanical engineer/heating and cooling technician.

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:

...[the beneficiary] will research, plan and redesign mechanical systems. He will install, test, repair, and replace all types of heating, ventilation and air conditions systems (HVAC), gas furnace, refrigerators, freezers, ice machine boxes, etc. Our systems were

misused by the previous owners, therefore, do not need to be replaced with new ones, since they could be briefly redesigned and repaired the right way by a professional; and look fairly new. [The beneficiary] will coordinate operation, maintenance, and repair activities to obtain optimum utilization of machines and equipment. He will be setting up and conducting tests of complete units and 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. Then he analyzes indicated and calculated test results in relation to design or rated specifications and test objectives, and modifies or adjusts equipment to meet all specifications.

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 beneficiary is a mechanical engineer, an occupation that would normally require a bachelor's degree in mechanical engineering or a related field. In its Occupational Outlook Handbook (Handbook), 2000-2001 edition, at page 93, the Department of Labor (DOL) describes the job of a mechanical engineer 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 electricity-producing generators, internal

combustion engines, steam and gas turbines, and jet and rocket engines. They also develop power-using machines such as refrigeration and air-conditioning equipment, robots used in manufacturing, machine tools, materials handling systems, and industrial production equipment. Mechanical engineers also design tools needed by other engineers for their work.

The record reflects that the petitioner, which is in the hotel business, employs 30 persons and has a projected gross annual income of \$1.5 million. The business in which the beneficiary is to be employed does not require the services of a mechanical engineer who researches, develops, designs, manufactures and tests tools, engines, machines, and other mechanical devices.

The duties that the petitioner endeavors to have the beneficiary perform are the general maintenance duties, which are similar to the duties that a heating, air-conditioning, and refrigeration mechanic and installer would execute in a small business establishment. In contrast to the description of a mechanical engineer, at pages 391 and 392 of the Handbook, the DOL describes the position of a heating, air-conditioning, and refrigeration mechanic and installer as follows:

Heating, air-conditioning, and refrigeration systems consist of many mechanical, electrical, and electronic components such as motors, compressors, pumps, fans...In central heating systems, for example, a furnace heats air that is distributed throughout the entire building via a system of metal or fiberglass ducts. Technicians must be able to maintain, diagnose, and correct problems throughout the entire system. To do this, they adjust system controls to recommended settings and test the performance of the entire system using special tools and test equipment.

Those working for smaller operations tend to do both installation and servicing, and work with heating, cooling, and refrigeration equipment.

The types of duties the petitioner ascribes to the beneficiary primarily fall within the scope of a heating, air-conditioning, and refrigeration mechanic and installer position rather than a mechanical engineering position. For example, the petitioner states that the beneficiary "will coordinate operation, maintenance, and repair activities to obtain optimum utilization of machines and equipment..." Such general maintenance duties are not duties normally associated with a mechanical engineer. 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, the petitioner 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, although the petitioner has provided three letters from individuals in the hotel/motel industry stating they have hired technicians with mechanical engineering degrees to perform their heating and cooling duties, three letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, none of the writers have indicated the number or percentage of technicians who hold such degrees. 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. The job fits the description of a heating, air-conditioning, and refrigeration mechanic and installer position, rather than a mechanical engineer. A review of the DOL's Handbook at page 393 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a heating, air-conditioning, and refrigeration mechanic and installer. Most employers prefer to hire those with technical school or apprenticeship training. In addition, a sizable number of technicians still learn the trade informally on the job. 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.