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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: EAC-00-217-51531 Office: Vermont Service Center

Date: MAY 14 2002

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 laboratory products with 330 employees and a gross annual income of \$30 million. It seeks to employ the beneficiary as a supervisor of injection molding 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 and photocopies of previously submitted documentation.

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 not shown that a bachelor's degree or higher in a specialized area was the minimum requirement to perform the duties of the proffered position. On appeal, counsel argues that the petitioner has submitted sufficient evidence to establish that the proffered position was a specialty occupation.

Counsel's statements on appeal are 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 a letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

...will be responsible for supervising in excess of over twenty employees and twenty-six molding machines in the injection molding field. His duties will include, evaluating the employees['] work habits under his charge, maintaining attendance reports, as well as training all

old and new employees for quality, trimming, parts removal, and packaging.

In this position, he will be called upon to keep a daily log on production for accurate parts counting and efficiencies. His technical skills will require him to assist in mold changes, troubleshooting of any technical problems that occur, and assist in troubleshooting any mechanical problem. He will also be involved in testing all new molds, and submit results to quality control for approval by the customer. To carry out his duties, [the beneficiary] will work with computer controlled machines.

In addition to the above duties, [the beneficiary] will be called upon to assist our company goals to become ISO-9002 compliant. In this supervisory capacity, [the beneficiary] will be required to work closely with upper management and may on occasions be visiting with our customers to assist them with any problems, new product development, or quality improvements. Furthermore, he will have the authority to hire and terminate employees within company guidelines.

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. The duties of the proffered position are those of a supervisor of manufacturing plant employees, specifically plastics-working

machine operators. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, finds no requirement of a baccalaureate degree in a specialized area for employment as a plastics-working machine operator. Even when plastics-working machine operators work with more complex computer numerically controlled machines, the most significant source of training is on-the-job training with additional courses available through machine tool manufacturers and technical schools.

Additionally, the Handbook finds no requirement of a baccalaureate degree in a specialized area for employment as a supervisor of manufacturing plant employees such as plastics-working machine operators. The minimum educational requirement for employment as a supervisor of manufacturing plant employees is often completion of high school with some additional training in human resources, computer software, and management. While the Handbook notes that employers increasingly seek an individual with a postsecondary technical degree for employment as a supervisor of manufacturing plant employees, there is no indication that a baccalaureate degree in a specialized area is required for such employment. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position.

Counsel argues that a bachelor's degree is a standard requirement within the plastics manufacturing industry for employment in similar and parallel positions. In an attempt to provide evidence of an industry standard, the petitioner has submitted three letters signed respectively by [REDACTED] of Plastic Injection Command, [REDACTED] of [REDACTED] the Laboratory Products Association, and [REDACTED]. These letters, these individuals claim that a bachelor's degree is required for employment as a supervisor of plastics-working machine operators within the plastics manufacturing industry. However, three letters are insufficient proof to establish the existence of an industry standard. Furthermore, none of the writers has provided any independent evidence which would tend to support the claims and opinions expressed in their respective letters. Moreover, not one of the writers has specified that a baccalaureate degree in a specialized area is required for employment as a supervisor of plastics-working machine operators. The record does not contain any additional documentation which would tend to establish the existence of an industry standard requiring a bachelor's degree for employment as a supervisor of plastics-working machine operators. Accordingly, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel asserts that the duties of the proffered position entail the supervision of workers operating highly specialized computerized machines in a technical production process, as well as interaction with upper management. Counsel contends that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. However, as noted above, the Handbook does not provide any indication that a baccalaureate degree or higher is required to be employed as either a plastics-working machine operator or a supervisor of such machine operators. Furthermore, a review of the Handbook finds no support for the assertion that the offered position is a specialty occupation based on either the beneficiary's supervision of workers operating computerized machines or any interaction with management associated with the performance of his supervisory duties. As such, it has not been persuasively established that the duties of the proffered position are so 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.