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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, DC 20536

AUG 05 2003

File: EAC 02 019 53381 Office: VERMONT 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)

ON BEHALF OF PETITIONER:

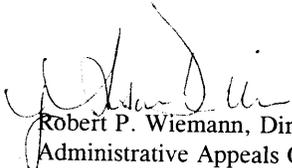
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a New York manufacturer of jewelry products. It has 12 employees and a gross annual income of \$1,000,000. It seeks to temporarily employ the beneficiary as a quality control engineer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of quality control engineer is a specialty occupation and submits the Department of Labor's (DOL) *Dictionary of Occupation Titles (DOT)* description of quality control engineer.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on October 11, 2001, the petitioner described the duties of the quality control engineer position as follows:

Plans and directs activities for control of quality standards for jewelry manufacturing processes.

Plans and directs activities concerned with development, application and maintenance of quality standards for jewelry manufacturing processes.

Develops and initiates standards and methods for inspection, testing and evaluation, utilizing knowledge in engineering.

Devises sampling procedures and designs and develops forms and instructions for reporting quality and reliability data.

The petitioner also stated that the beneficiary was presently working as a production engineer within the petitioner's business. The petitioner also submitted an educational equivalency document that stated the beneficiary's degree in mining engineering from the Moscow Institute of National Economy was the equivalent of a Bachelor of Science degree in mining engineering from an accredited academic institution of higher education in the United States.

The petitioner also provided the following expanded description of the beneficiary's prospective position within the petitioner's business:

In today's growing market, the company is willing to expand its share of jewelry manufacturing market by development and production of high quality decors. With this intent [the petitioner] offers [the beneficiary] a position of a quality control engineer.

. . . .

. . . [T]he petitioner] will need to use the same skills as he utilized working at his other jobs. The

duties will substantially include establishing programs for evaluating precision and accuracy of production equipment and testing, measurement, and analytical equipment and facilities. Other tasks will entail development and implementation methods and procedures for disposition of discrepant material and devising methods to assess cost and responsibility.

On December 13, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities and the percentage of time that the beneficiary would spend performing the specific duties each day. The director also requested more evidence as to which specific tasks required the expertise of an individual with a baccalaureate degree. In addition, the director requested that the petitioner submit documentary evidence, that in the petitioner's company and industry, a baccalaureate degree in a specific field of study was a standard minimum requirement for the job offered. Finally, the director requested more evidence with regard to the number of individuals employed in similar positions in the past two years, with the academic degrees that they hold, as well as pay stubs or Form W-2s as proof that the petitioner employed these workers.

In response, the petitioner stated that the petitioner is a company supplying jewelry manufacturers with high-precision equipment and that the equipment manufactured was, in turn, used to manufacture and repair jewelry. The petitioner equated the proffered position to that of an industrial engineer and stated that about 73 per cent of industrial engineers worked in the manufacturing industries. Since the petitioner manufactured high precision equipment used in the manufacturing of jewelry, there was nothing extraordinary in its hiring an industrial engineer.

The petitioner also stated that the majority of its employees were tool set up operators and that the quality of the equipment manufactured by these operators needed to be checked due to the precise and delicate nature of jewelry work. The petitioner stated that the beneficiary was selected for the position because he had education in mining where he studied machinery used to manufacture cutting, drilling, boring and other similar equipment.

The petitioner also submitted an excerpt from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on industrial engineers, a New York State Form S-45 that reported quarterly withholding tax and unemployment insurance sums for the petitioner's employees, and an IRS Form 1120 U.S. Tax Return for an S Corporation. The New York State Form listed nineteen employees with combined quarterly wages of \$38,100.

On April 11, 2002, the director denied the petition. The director noted that the petitioner's assertion that industrial engineers are

employed in the manufacturing industry did not establish that the jewelry manufacturing industry routinely hired individuals with baccalaureate degrees to perform the proffered position. In addition the director stated that the petitioner had not established that the position required a baccalaureate degree in a specific specialty or that the duties of the position were so unique that only an individual with a baccalaureate degree could perform the job.

On appeal, counsel submits an excerpt from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* and states that the specific vocational preparation (SVP) rating for a quality control engineer is 8. Counsel states that since this SVP rating indicates at least four years of preparation, the proffered position is clearly a specialty occupation. Counsel further asserts that since the proposed duties of the proffered position directly correspond to the duties defined in the *DOT* description of quality control engineer, the position should qualify as a specialty occupation.

Upon review of the record, the petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. On page 112, the *Handbook* states the following with regard to industrial engineers:

Industrial engineers determine the most effective ways for an organization to use the basic factors of production-people, machines, materials, information, and energy-to make a product or to provide a service. They are the bridge between management goals and operational performance. They are more concerned with increasing productivity through the management of people, methods of business organization, and technology than are engineers in other specialties, who generally work more with products or processes. Although most industrial engineers work in manufacturing industries, they also work in consulting services, healthcare, and communications.

With regard to training, the *Handbook* on page 103 states: "a bachelor's degree in engineering is required for almost all entry-level engineering jobs."

Upon review of the duties outlined by the petitioner and the *Handbook* description, the petitioner has not established that the proffered position is that of an industrial engineer. Duties listed by the petitioner in the original petition included planning and directing quality control standards and evaluation procedures for the petitioner's manufactured goods. The petitioner then added the development of high quality decors to the job duties. The petitioner has provided no further breakdown of the beneficiary's duties to indicate the percentage of time spent in any particular duty, although it did indicate that the beneficiary would be working with a staff of machine operators. Based on the information presently in the record, the proffered position in the instant petition could also be viewed as analogous to the position of quality control engineering technician. The *Handbook* describes this position on page 100 as follows:

Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control-inspecting products and processes, conducting tests, or collecting data.

On page 101, the *Handbook* states that the educational requirement for engineering technicians can range from no formal training to the requirement of a 2-year associate degree in engineering technology.

Without more persuasive evidence, the petitioner has not established that the proffered position is that of an industrial

engineer. Without such a finding, the proffered position is not a specialty occupation that requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to the second and third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the jewelry and jewelry-making equipment industry in parallel positions, and that the employer normally requires a degree or its equivalent for its electronic technician positions, to date, the petitioner has submitted no evidence to establish either criterion. For example, the petitioner provided no job vacancy announcements for similar jobs in comparable jewelry manufacturing companies, or any information on the educational backgrounds of persons who have previously held the proffered position.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that 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's description of the proffered position in the instant petition is devoid of details that would illustrate the particular specialization or complexity involved in the duties of the position. For example, the record contains no evidence on the type, the volume, or the complexity of the jewelry or jewelry-making equipment machinery produced by the petitioner. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary. Accordingly the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.