

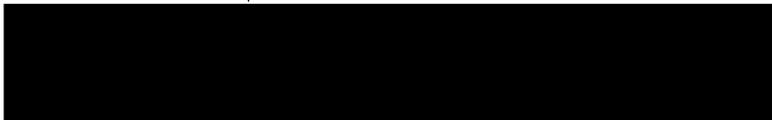
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, NW
BCIS, AAO, 20 Mass. Ave., N.W. 3rd Floor
Washington, D.C. 20536



10/10/03

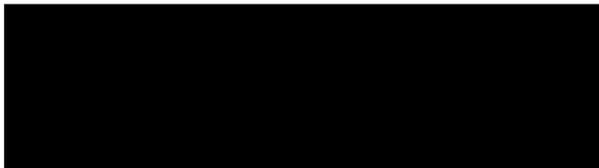
File: WAC 01 297 50060 Office: CALIFORNIA SERVICE CENTER Date:

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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

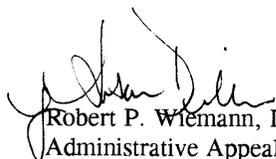
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a company that rebuilds air conditioning compressors for the automotive industry. It has three employees and an unreported gross annual income. It seeks to extend its employment of the beneficiary as a mechanical engineer for 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 offered to the beneficiary is a specialty occupation and not, as the director determined, a position as a technician repairer. Counsel also submits an expert opinion letter from [REDACTED], Associate Professor of Mechanical Engineering at New Jersey Institute of Technology (NJIT).

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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

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.

In the instant H-1B petition received by the Bureau on September 27, 2001, the petitioner described the beneficiary's position as follows:

[The beneficiary's] responsibilities include research, planning and designing of mechanical products and system[s], directing and coordinating activities involved in fabrication, operation, application, installation and repair of mechanical products and systems. He will research and analyze data, such as customer design proposals, specifications, and manuals to determine feasibility of design or application. He will design products such as instrument controls, engines, machines and mechanical, thermal, hydraulic or heat transfer systems, applying knowledge of engineering principles.

Further, he shall direct and coordinate fabrication and installation activities to ensure products and systems to [sic] conform to engineering design and customer specifications. He will coordinate operations, maintenance and repair activities to obtain optimum utilization of machines and equipment.

The petitioner also submitted an educational equivalency evaluation of the beneficiary's foreign education credentials.

On December 5, 2001, the director asked for additional information with regard to this petition. In particular, the director requested a complete detailed description of the duties to be performed by the beneficiary indicating the percentage of time spent in various duties as well evidence that the position fulfills one of the criteria enumerated in 8 C.F.R. § 214.2(h) (4) (iii) (A).

In response, the petitioner submitted a more extensive description of the mechanical engineer position that listed the percentages of time to be spent in the various duties, as outlined below:

[The beneficiary] will be performing the duties inherent to all Mechanical Engineers—analysis, research, design leading to eventual manufacture of parts. Specifically he will be required to design components to precise specification for their work. He will be required to design and/or modify parts to both improve quality of exiting parts and to develop new parts to meet future needs. He shall design and carry out testing both simulated and actual testing activities on components and equipment to ensure their operation performance meets the design specifications. He will further evaluate parts in the manufacturing process to insure parts comply with levels of metallurgical tolerance. In short, he shall insure products meet legal and industry standards. Finally, he will insure production proceeds in accordance with specifications.

It is impossible to give a specific breakdown of duties to be performed. The beneficiary's daily responsibilities are never the same in any two given days. Evenso, an estimate of time spent on specific duties is as follows:

Research and Development	--	40%
Testing	--	30%
Miscellaneous	--	10%
Design and implementation	--	20%

With regard to the degree requirement for the position, counsel cited the language of the Department of Labor's *Occupational Outlook Handbook (Handbook)*: "A bachelor's degree is required for entry-level jobs."

On February 26, 2002, the director denied the petition stating:

The Service has interpreted the duties [of beneficiary's position] to be similar to those of a technician repairer.

The nature of the beneficiary's job duties as described above does not show a professional complexity, which requires professional skills. In fact, the offered position is primarily one of a technician doing the servicing or repairing of components, which is not of a scope and complexity, which requires professional skills.

On appeal, counsel submits a letter from Dr. [REDACTED] Associate Professor, Department of Mechanical Engineering, New Jersey Institute of Technology. He states that the petitioner's

business requires a "high level of engineering expertise" due to the sophistication of air conditioners used in modern vehicles. He further asserts that the duties listed in petitioner's position description require:

[S]pecific knowledge and expertise in a number of disciplines . . . [which] are usually taught as senior courses (required or elective) in Mechanical Engineering and require a wide range of pre-requisite courses covering the entire mechanical engineering undergraduate curriculum for an accredited US university. . . .

In conclusion, it can be stated that the specific duties for the position of Mechanical Engineer at Air Conditioning Heating & Air Corporation are highly specialized in the area of Mechanical Engineering and involve very complex engineering assignments.

The director described the proffered job as being that of a "technician repairer." The position description does not reference the repair or servicing of any items whatsoever, and so that element of the director's interpretation of the position description is not considered. The *Handbook* describes the duties of an engineering technician as solving "technical problems Their work is more limited in scope and more practically oriented than that of scientists and engineers." In discussing the duties of a mechanical engineering technician, the *Handbook* further states that they:

[H]elp engineers design, develop, test, and manufacture industrial machinery They may assist in product tests They may make sketches and rough layouts, record data, make computations, analyze results, write reports. When planning production, mechanical engineering technicians prepare layouts and drawings of the assembly process and of parts to be manufactured. They estimate labor costs, equipment life, and plant space.

In contrast, the petitioner has stated that the beneficiary will perform the research and will actually design the components and parts, rather than assist in the design. He will be responsible for the design and implementation of product tests and work with users to meet their specifications. The *Handbook* describes the duties of a mechanical engineer as "research, develop, design, manufacture and test tools, engines, machines, and other mechanical devices." These are the duties included in the proffered position.

Upon review of the record, the *Handbook*, and the letter from Dr. Dreizen, the petitioner has established that the position is a specialty occupation as contemplated by the statute and 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.