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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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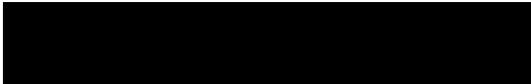


File: WAC-02-004-50643

Office: CALIFORNIA SERVICE CENTER

Date: DEC 15 2003

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 Citizenship and Immigration Services (CIS) 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a staffing services business with 20 employees and a gross annual income of \$780,000. It seeks to employ the beneficiary as an industrial engineer 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.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the beneficiary will be performing industrial engineering duties for its contractor, Cleanway Products. Counsel further states that the beneficiary's proposed duties, which include developing management control systems and conducting time and motion studies, are so complex that a baccalaureate degree in engineering is required.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. The record contains a letter, dated March 12, 2001, from the manager of the petitioner's contractor, Cleanway Products, who describes the duties of the offered position as follows:

1. Conduct time and motion study to determine how much time are [sic] spent by [sic] in terms of physical and mental effort for every task component which will be used as an input in measuring employee productivity and in assessing lead time spent in completing assigned projects (Installation, maintenance, service of Industrial Washing Machines, Dishwashers) to our client hospitals, nursing homes, schools, dormitories[,] etc.[;]
2. Implements [sic] Total Quality management in every work task to achieve organizational efficiency and effectiveness necessary for long[-]term survival of the company[;]
3. Develop guidelines relative to Total Quality Management to further improve the way tasks are being performed by all employees to satisfy all customers[;]
4. Develop and implements [sic] job evaluation program necessary in establishing wage and salary structures to foster equity of pay based on the relative worth of every job[;] [and]
5. Develops [sic] management control systems and conduct cost-benefit analysis.

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 AAO does not agree with counsel's assertion that the beneficiary is an industrial engineer, an occupation that would normally require a bachelor's degree in engineering or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 112, the Department of Labor (DOL) describes the job of an industrial engineer, in part, as follows:

To solve organizational, production, and related problems most efficiently, industrial engineers carefully study the product and its requirements, use mathematical methods such as operations research to meet those requirements, and design manufacturing and information systems. They develop management control systems to aid in financial planning and cost analysis, design production planning and control systems to coordinate activities and ensure product quality, and design or improve systems for the physical distribution of goods and services. Industrial engineers determine which plant location has the best combination of raw materials availability, transportation facilities, and costs. . . .

Although the record indicates that the site of the beneficiary's intended employment is the petitioner's contractor, Cleanway Products, the record does not contain any specifics about this contractor, such as the number of its employees or its gross annual income. Furthermore, the record, as it is presently constituted, does not demonstrate that Cleanway Products, which is engaged in the installation, after-sales service, maintenance, and repair of institutional washing machines and dishwashers, requires an individual with a knowledge of sophisticated engineering techniques normally associated with the duties of an industrial engineer.

It is incumbent on the petitioner to provide sufficient information to demonstrate that the proffered position is a

specialty occupation. As very little information is known about the intended site of the beneficiary's employment, Cleanway Products, the petitioner has not persuasively established that the beneficiary would be performing duties normally associated with an industrial engineer. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required by Cleanway Products for the position being offered to the beneficiary.

Second, the petitioner has not shown that Cleanway Products has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to Cleanway Products. The AAO notes that, because the petitioner is not the beneficiary's ultimate employer, it is the employment requirements of Cleanway Products, not the petitioner, that are controlling. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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.