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

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



File: EAC 02 015 50532

Office: Vermont Service Center

Date: 10/10/2008

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:



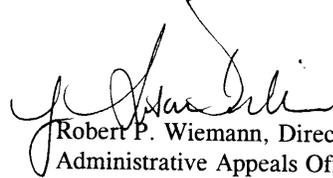
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a New York corporation involved in the business of providing metals and chemicals used in the production of high tech equipment. It has 2 employees in the United States and a gross annual income of approximately \$4,000,000. The petitioner seeks to employ the beneficiary as a metals buyer for a period of three years. The director determined that the petitioner failed to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states in part that the proffered position is a specialty occupation and that the I-129 petition should be approved.

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 Bureau does not simply rely on a position's title 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 Bureau considers.

The beneficiary's job responsibilities are described by the petitioner as follows:

The metals buyer . . . will evaluate and inspect a variety of metals for purchasing and trading with our consumers. She will assess metals and evaluate them for specific properties and traits that are required of our sensitive products and uses. She will utilize her metallurgical knowledge to assess grade, quality and physical properties of metals to assess whether they meet our standards and needs. This will include sample testing utilizing standard scientific methods. She will then value such metals and shipments of metals based upon advanced research of the market. This will require the buyer to study market trends, supply and demand for specific metals and related goods. Then she will contact vendors and suppliers and negotiate prices for purchase and sale. She will analyze bids and quotes, and negotiate prices for purchase and sale of metals. She will have authority to negotiate and entertain contracts.

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 qualified the offered position as a specialty occupation. The petitioner has provided two position evaluations that the Bureau finds persuasive. The first is from [REDACTED] a metallurgy professor with more than 46 years of industry experience. Mr. [REDACTED] states that a Bachelor of Science degree in Metallurgical Engineering is a minimum requirement for the offered position due to the in depth scientific knowledge required to perform the job function, i.e. evaluate compliance with detailed specification requirements and be knowledgeable in the performance of related mechanical testing, quality control functions and metallurgical failure analysis.

The second evaluation was provided by Dr. [REDACTED] Dr. [REDACTED] is an associate professor of mechanical engineering at Ohio State University. In that capacity, Dr. [REDACTED] is responsible for reviewing academic and experience qualifications in the field of mechanical engineering for applicants to the university. He is vested with authority to grant college level credit based on a candidate's foreign educational credentials, training and/or employment experience. Based upon the requirements of the offered position, Dr. [REDACTED] is of the opinion that performance of the associated duties requires bachelor level educational training in metallurgical engineering, or a related field. He further states that it is a general, industry standard practice within the field of metals assessment and management for a company of the size and business activity of the petitioner to hire a metals buyer with a bachelor's level educational and/or professional background in metallurgical engineering, or a related area.

A portion of the job responsibilities to be assigned to the beneficiary are similar to those assigned to materials engineers. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 113, the Department Of Labor describes, in part, the duties of the above designated position as follows:

Materials engineers are involved in the extraction, development, processing, and testing of the materials used to create a diversity of products, from computer chips and television screens to golf clubs and snow skis. They work with metals, ceramics, plastics, semiconductors, and combinations of materials called composites to create new materials that meet certain mechanical, electrical, and chemical requirements. They also are involved in selecting materials for new applications.

As noted in 8 C.F.R. § 214.2(h)(4)(ii), an occupation that requires theoretical and practical application of engineering principles is deemed to be a specialty occupation as it 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. For this occupation, the applicant is required to assess grade, quality and physical properties of various metals to determine whether those metals are suitable for various uses. In order to perform this function, an employee, at a minimum, would require a bachelor of science degree in metallurgical engineering or a related field. Thus, the petitioner has established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position. The petitioner has further established that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to

perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent.

The beneficiary's educational qualifications have been evaluated and are found to be equal to a Bachelor of Science degree in Metallurgical Engineering from an accredited institution of higher education in the United States. She is, therefore, qualified for the position.

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.