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

**Identifying data deleted to  
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invasion of personal privacy**

[Redacted]

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

File: SRC-02-062-51933

Office: TEXAS SERVICE CENTER

Date:

*06 21 2009*

IN RE: Petitioner:  
Beneficiary:

[Redacted]

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:

[Redacted]

INSTRUCTIONS:

**PUBLIC COPY**

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.

*[Signature]*  
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 The decision of the director will be withdrawn and the matter will be remanded for further consideration.

The petitioner is a beach resort with approximately 320 employees and an estimated gross annual income of \$17 million. It seeks to employ the beneficiary as an HVAC engineer/specialist for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of 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 the beneficiary's work experience qualifies him for the proffered position. On appeal, counsel states, in part, that the beneficiary has been employed by the petitioner as an H-2B HVAC technician and now wishes for him to be the petitioner's facilities manager. Counsel further states that the proffered position requires the services of an individual with at least a bachelor's degree in business administration or an equivalent thereof, and relevant work experience in personnel management, construction management, and HVAC project management. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as a facilities manager.

Counsel also submits an opinion from a university professor as evidence that the beneficiary holds the equivalent of a university-level bachelor's degree in construction management.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

In this professional assignment, [the beneficiary] will utilize his HVAC engineering experience to install, service and repair environmental control systems at the resort. His professional duties will involve utilizing professional-level knowledge of HVAC engineering, refrigeration theory, and structural layout/architecture to plan requirements for the fabrication, testing and servicing climate control and heat transfer assemblies and systems. He will also ensure that all HVAC work conforms to project specifications, local codes and ordinances, and state and/or federal regulations. Finally, in this professional assignment, he will work with the Owner in connection with the preparation and execution of budget financing and project strategies.

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in business administration, construction management or a related field. The proffered position is primarily that of a heating, air-conditioning and refrigeration mechanic and installer. Counsel's assertion on appeal that the beneficiary will manage and direct HVAC technicians, is noted. Such duty, however, was not included in the description of duties that was submitted at the time of the filing of the petition. It is also noted that a facilities manager position is not what is reflected on the petitioner's labor condition application.

A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 503, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a heating, air-conditioning and refrigeration mechanic and installer. Though employers prefer to hire those with technical school or apprenticeship training, a sizable number of mechanics and installers still learn the trade informally on the job. The record indicates that the beneficiary has over 12 years of related experience. As such, it appears that the beneficiary is qualified to perform the duties of the proffered position.

The director has not determined whether the position qualifies as a specialty occupation. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.