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

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

**PUBLIC COPY**



File: WAC 01 213 56446

Office: CALIFORNIA SERVICE CENTER

Date: **MAR 13 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:



**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

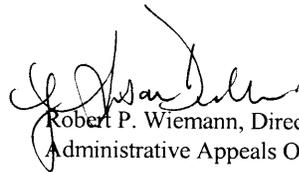
INSTRUCTIONS:

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 Director, California Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office on appeal. The director's decision will be withdrawn and the petition remanded to the director for further consideration.

The petitioner is a California company that designs, manufactures and markets semiconductor wafers. It was established in 1986, employs 600 employees and has a gross annual income of 81 million dollars. It seeks to temporarily employ the beneficiary as a senior manufacturing 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 senior manufacturing engineer is a specialty occupation and that the Service failed to consider all of the evidence submitted by the petitioner.

Section 214(i)(1) of 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 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 position offered to the beneficiary is a specialty occupation. In the original petition received by the California Service Center on June 15, 2001, the petitioner explained the petitioner's business activities as follows:

██████████ is a leading manufacturer of substrates for high performance compound semiconductors used in a variety of electronic and optoelectronic applications. The company was established to commercialize Vertical Gradient Freeze (VGF) crystal-growth technology. The company uses its VGF technique to produce low-defect semi-insulating and semi-conducting Gallium Arsenide (GaAs) and Indium Phosphide (InP) substrates. We also sell the single element substrate, Germanium (Ge) to manufacturers of solar cells used in satellites. With the steady growth of the company, currently we have a need for the position of Senior Manufacturing Engineer who will [be] responsible for providing engineering and technical assistance in the development of products.

The petitioner described the proffered position as follows:

Specifically, as a senior manufacturing engineer, [the beneficiary's] duties are as follows:

1. develop, direct and coordinate with product manufacturing process;
2. implement plans and standard for manufacturing process;
3. define manufacturability, quality, reliability, and testability of the products;
4. confer with planning and design staff concerning product design and tooling to ensure efficient production methods;
5. confer with management, engineering and other staff regarding manufacturing capabilities and insure that the products are manufactured/assembled in conformance with the required standards;
6. prepare technical notes and reports for management;
7. other job duties as required.

The petitioner also submitted copies of the beneficiary's undergraduate degree in chemistry from the University of Bristol in England and a doctoral degree in metallurgy and materials from the University of Birmingham in England. Although the petitioner stated in its cover letter that the beneficiary's diploma and transcript with educational evaluation were submitted in the original petition, the record only reflects the submission of the two diplomas and a two-page transcript of pre-university studies in Scotland from 1989 and 1990.

On August 22, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director stated "the duties as described appear to be more managerial or executive duties", and added that a manager or executive is not normally considered a member of a specialty occupation when the employees supervised are not members of the specialty occupation or the duties of the position are not of a scope and complexity which requires professional skills. The director requested a detailed description of the work to be performed, including specific job duties, level of responsibility, types of employees supervised, and the minimum education, training, and experience necessary to perform the job. In addition, the director asked the petitioner to explain why the work to be performed required the services of a person who has a college degree or its equivalent in a specific specialty.

In response, the petitioner reiterated the job duties outlined in the original petition and referred to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) classification of engineers. The petitioner stated the job duties for engineers in the *Handbook* classification are similar to the proffered position. With regard to numbers of persons supervised, the petitioner stated that the position of senior manufacturing engineer did not supervise any employees. The petitioner also stated that a bachelors' degree in engineering is generally required for entry-level engineering jobs, and described the beneficiary's degrees in metallurgy and materials as well as in chemistry. The petitioner also submitted excerpts from the *Handbook* classifications on engineers, industrial engineers, except safety engineers, and materials engineers.

On October 25, 2001, the director denied the petition. The director did not find the duties of the proffered position to require the theoretical and practical application of a body of highly specialized knowledge, that would require a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the profession. In addition, the director did not find that the information submitted established that the petitioner normally required applicants for the position to possess baccalaureate or higher-level degrees in the field. The director also did not find that the proposed duties and the stated level of responsibility established a complexity or authority which was beyond that normally encountered in the occupational field.

It should be noted that although the director in his decision referred to the submission by the petitioner of different advertisements from different companies for a manufacturing engineer, these materials were not included in the record.

On appeal, counsel submits an educational equivalency document dated June 14, 2001 that states the beneficiary's degrees from England are the equivalent of a bachelor of science in chemistry and a doctoral degree (Ph.D.) in metallurgy and materials from an accredited institution in the United States. No university transcripts are submitted with this evaluation.

Counsel again compares the job duties for the proffered position named in the original petition with the job duties of engineers as described in the *Handbook*. Counsel maintains that the proffered position job duties are substantially similar to duties of engineers and different from duties of a manager or executive. Counsel submits the same *Handbook* classification information on engineers along with other *Handbook* excerpts on Engineering, Natural Science, and Computer and Information Systems Managers.

The Bureau 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. The petitioner has identified the proffered position as a senior manufacturing engineer. Based on the nature of the petitioner's business as documented on its website at [www.axt.com](http://www.axt.com), the manufacturing element of the proffered position involves chemical materials. Upon review of the *Handbook* classifications of engineers, including materials engineers, and engineering and natural sciences managers, it is clear that both engineer positions and engineering manager positions are specialty occupations.

According to the 2002-2003 edition of the *Handbook* on page 45: "most engineering and natural sciences managers have previous experience as engineers, scientists, or mathematicians". In addition, the *Handbook* on page 103 states the following: "A bachelor's degree is required for most entry-level jobs." In addition, the occupation of engineer is specifically listed in 8 C.F.R. § 214.2(h)(4)(ii) as a specialty occupation. Accordingly, the petitioner has established that the proffered position does require a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the position.

Beyond the decision of the director, the evidence on the record is not persuasive that the beneficiary is qualified to perform the duties of the proffered position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As previously stated, according to the *Handbook*, most engineering positions require a bachelor's degree in engineering. (Emphasis added.) The beneficiary has an undergraduate degree in chemistry and a doctorate in metallurgy and materials. Such educational preparation is more indicative of a materials scientist than a senior manufacturing engineer. *Handbook* at 228.

The petitioner stated in its petition that the proffered position required at least a master's degree in chemical engineering, material engineering, or a closely related field. The record is devoid of any information that demonstrates how the beneficiary's degrees are closely related to advanced degrees in chemical or material engineering. While transcripts of the beneficiary's doctoral studies or information on relevant work experience could be used to establish such a relationship, to date, the petitioner has submitted no such information.

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 established certain criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A) with regard to whether the proffered position is a specialty occupation; however, the issue of whether the beneficiary is qualified to perform the job is not resolved. The petition is remanded to the director to determine whether the beneficiary is qualified to perform the duties of the proffered position. The director may request any additional evidence deemed necessary to assist him with his determination.

**ORDER:** The director's decision is withdrawn. The case is remanded for entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.