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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 N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536

[Redacted]

File: LIN 02 142 53154 Office: NEBRASKA SERVICE CENTER Date: MAY 01 2003

IN RE: Petitioner: [Redacted]  
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]

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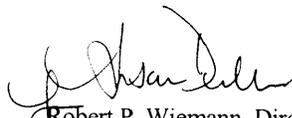
INSTRUCTIONS:

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a residential and commercial real estate development company with 11 employees and a stated gross annual income of \$375,433. The petitioner seeks to employ the beneficiary as a mechanical 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 and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (The Act), 8 U.S.C. § 1184(i)(1), 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 fields 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 director concluded that the proffered position appeared to be that of a heating, air-conditioning, and refrigeration mechanic and installer, an occupation that does not normally require a baccalaureate degree in a specific specialty as a minimum for entry into the occupation.

On appeal, counsel asserts that the duties of the proffered position are those of a mechanical engineer. Counsel further asserts that that the petitioner requires a bachelor's degree in mechanical engineering for the position and that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty.

When determining whether a particular job qualifies as a specialty occupation, the Bureau (formerly the Service) considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As a mechanical engineer, [the beneficiary] will be required to supervise and maintain the work and machinery which consists of heating and cooling and heavy equipment. He will be responsible for machine installation, air conditioning, hydraulics, construction machinery, and water projects for various residential and commercial buildings.

In response to a Bureau request for additional evidence, the petitioner provided the following, expanded description of the duties and the percentage of the beneficiary's time allocated to each duty:

- Developing, designing, testing for installation and maintenance of heating and cooling and heavy equipment. This will take approximately 13 hours per week.
- Applying principles and techniques of mechanical engineering, components, products, and systems for commercial and residential purposes. This will take approximately 10 hours per week.
- Supervise sub-contractors, scheduling work to be done, implement the approved blue prints and "make as build drawings". This will take approximately 5 hours per week.
- Working directly with the foreman on job sites to ensure that manufacturing, construction, installation and operational testing [conform] to functional specifications and customer requirements. This will take approximately 5 hours per week.

- Estimate cost of projects which include layouts, shop and drawings, and scheduling work times. This will take approximately 2 hours per week.

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.

The Bureau does not agree with counsel's assertion that the proffered position is that of a mechanical engineer. The Department of Labor (DOL) describes the work of mechanical engineers in the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 114 as follows:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. . . . They also develop power-using machines such as refrigeration and air-conditioning equipment. . . .

In a letter that accompanied the I-129 petition, the petitioner's President, [REDACTED] indicated that the beneficiary would be required to oversee the installation and maintenance of heating and air conditioning, hydraulics, construction machinery and water

Mr. ██████ stated in his March 27, 2002 letter it is the company's policy to require a bachelor's degree in mechanical engineering for the position. In support of this statement, Mr. ██████ provided copies of the diplomas and transcripts of four individuals who appear to have been employed by the petitioner. Three of these individuals were awarded bachelor's degrees in mechanical engineering from Iraqi institutions of higher education, and one individual holds a bachelor of science degree in engineering technology with specialization in electrical power from an Iraqi university. It is noted that the petitioner has not provided any evidence setting forth the job titles or duties of these individuals. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Although the petitioner's past hiring practices suggest that it prefers to hire individuals with a bachelor's degree in mechanical engineering for the offered position, the petitioner's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. The Bureau must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. *Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000).

The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if the Service were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See *id.* at 388. In this case, the duties of the position do not appear to require the theoretical and practical application of a body of highly specialized knowledge as set forth at section 214(i)(1) of the Act. The duties of the position appear to be those normally performed by electromechanical engineering technicians as that job is described by the DOL in the *Handbook*.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that

projects for various residential and commercial buildings. In response to a Bureau request for additional evidence, the petitioner indicated that the beneficiary would spend approximately 23 hours per week "developing, designing, testing for installation and maintenance of heating and cooling and heavy equipment" and "applying principles and techniques of mechanical engineering, components, products, and systems for commercial and residential purposes." The petitioner's expanded listing of the job's duties is vague and provides little information as to the actual, day-to-day tasks to be performed by the beneficiary. The petitioner has not provided any explanation as to precisely what type of machinery the beneficiary would be required to design and develop. Nor has the petitioner identified specifically which of the beneficiary's tasks involve "applying principles and techniques of mechanical engineering, components, products, and systems for commercial and residential purposes." Furthermore, the petitioner has not provided any explanation as to why the initial listing of duties made no mention of the beneficiary's purported design and development responsibilities. Since these duties would constitute more than half of the beneficiary's weekly workload, the Bureau is not persuaded to classify the proffered position as that of a mechanical engineer based on the nature of these duties.

Upon further review, the proffered position appears to be that of a mechanical engineering technician. The DOL describes the work of electromechanical engineering technicians at page 100 of the *Handbook* as follows:

*Electromechanical engineering technicians* combine fundamental principles of mechanical engineering technology with knowledge of electrical and electronic circuits to design, develop, test, and manufacture electrical and computer-controlled electrical systems.

A review of the *Handbook* at pages 101-102 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an electromechanical engineering technician. Although it may be possible to qualify for a few engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and the Armed Forces.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Therefore, the director's decision is affirmed.

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.