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

File: LIN-02-188-53088 Office: NEBRASKA SERVICE CENTER Date:

NOV 12 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 engaged in the sale, service, and installation of heating and air conditioning units. It has 30 employees and a gross annual income of \$1,102,498. It seeks to employ the beneficiary as a project 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 proposed duties, which include oversight of the expansion of its brake manufacturing plant, 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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The duties of the Project Engineer include the planning, execution and operation of equipment, which is used to properly install commercial grade heating and air conditioning systems.

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 proffered position would normally require a bachelor's degree in engineering or a related field. Although the petitioner's owner maintains that only a general description of the proposed duties is reflected on Part V of the petition, the duties described on the petition and in the petitioner's original letter, dated May 15, 2002, do not appear to relate at all to the expanded description of duties that was submitted by the petitioner's owner in his June 26, 2002 letter. In his June 26, 2002 letter, the petitioner's owner states, in part, as follows:

Although our nontechnical description of the job at issue, which we gave in Part V of our Petition, Form I-129, was rather general, a more detailed explanation of

that position does, in fact, show how this position requires a very specialized knowledge and skill. Specifically, our company has been retained by a Japanese[-]based machine manufacturing company to install a very technical and sophisticated assembly line apparatus at a Toyota manufacturing plant in Tell City, Indiana. . . .

As described above, the beneficiary's proposed duties have been revised from installing commercial grade heating and air conditioning systems to installing a very technical and sophisticated assembly line apparatus at a Toyota manufacturing plant. Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change a position's title or its associated job responsibilities after the filing of the petition. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, as have occurred here, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. As such, for the purposes of this proceeding, the proffered position is similar to that of a heating, air-conditioning, and refrigeration mechanic and installer with supervisory or managerial duties. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 502, 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 with supervisory or managerial duties. Because of the increasing sophistication of heating, air-conditioning, and refrigeration systems, employers prefer to hire applicants with technical school or apprenticeship training. Some technicians may advance to positions such as supervisor or service manager. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it 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 the petitioner. The letter from the vice president, Daniel S. Hoefling, of Industrial

Contractors, Inc. is noted. Mr. Hoefling submits a job description for a "field engineer/estimator" position, and states, in part, that he normally requires a Bachelor of Science degree for its field engineer positions. The petitioner, however, has not demonstrated that the proposed duties of the proffered position are as complex as those described in the position description submitted by Mr. Hoefling. For example, the position description for the "field engineer/estimator" includes the following: "Computes cost factors and prepares estimates used for management purposes such as planning, organizing, and scheduling work, preparing bids, selecting vendors or subcontractors, and determining cost effectiveness" and "Conducts specialized studies to develop and establish standard hour and related cost data or effect cost reductions." 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.

Furthermore, although not explicitly stated, in the original cover letter, dated May 15, 2002, the petitioner's owner, Everett Baylor, suggests that the petitioner, whose location is in Evansville, Indiana, owns an additional site in Tell City, Indiana, the location of the beneficiary's proposed employment. In other words, it originally appeared that the beneficiary would be performing duties at the petitioner's own job site. Information provided subsequently by Mr. Baylor, however, as a result of further inquiry by the director, revealed that the petitioner did not have an additional site in Tell City Indiana, but, rather, was hired by the Japanese corporation, ATTC Manufacturing, Inc., to provide mechanical and sheet metal work at ATTC's manufacturing plant located in Tell City, Indiana. Inconsistencies such as these lead to confusion. In addition, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.