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

OCT 23 2003

FILE: EAC 02 099 53273

OFFICE: VERMONT SERVICE CENTER

DATE:

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)

IN BEHALF OF PETITIONER:

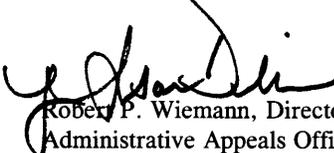
## INSTRUCTIONS:

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 a manufacturer of plastic cable manufacturing machinery that currently employs 35 people and has a gross annual income of \$8,000,000. It seeks to employ the beneficiary as a process engineer for a period of three years. The director denied the petition as failing to establish that the proffered position qualified as 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 for the classification of qualified nonimmigrant 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 the term "specialty occupation" as an one 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.

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 Form I-129 identified the proffered position as "Process Engineering Technician," and, for proposed duties, stated "Develop process technology and equipment used to make glass preforms for optical and electronic applications; commission and train in use."

Filed with the I-129 was a January 24, 2002 letter from the petitioner's Chief Executive Officer (CEO). The CEO's letter described the petitioner as "an internationally recognized manufacturer and distributor of manufacturing equipment used in the manufacture of a variety of cable types, particularly as used in communications and power industries," including "fiber, fiberoptic, telephone, coaxial, and power distribution cables." Here is the letter's description of the proffered position:

The process engineering position involves using technical engineering principles to develop machines, equipment, processes, and systems used in manufacturing glass preforms for optical and electronic applications, and will be part of a team developing systems in this comparatively new area for Royle. It will involve analyzing the customers' specifications and performance requirements to determine how we will develop the required manufacturing equipment and systems. The position is also responsible for quality control of the systems developed, commissioning, and on-site consumer training in operation of the systems developed.

In this letter, the CEO also stated that the technical demands of the proposed position required a "professionally trained engineer" with "specialized, related working experience in addition to an engineering-related degree."

The director issued a request for specified types of additional evidence relevant to the proffered position's qualification as a specialty occupation. The director noted, in part, that the petitioner's "brief description of job duties associated with this position does not demonstrate that the preponderance of the

beneficiary's job duties will be so complex that they could be considered professional in nature."

In response to the request for additional evidence, counsel submitted (1) a five-page letter, dated February 12, 2002, from the CEO; (2) an e-mail from the petitioner to counsel which provides the language of the petitioner's Internet advertisement to which the beneficiary responded; (3) three Internet advertisements from other employers seeking engineers, submitted to support the contention that an engineering degree is both required for the proffered position and an industry standard for the position; and (4) a resume received by the petitioner from a person with a bachelor's degree in engineering who is working for a competitor in a less demanding position than the one proffered here.

According to the petitioner, the beneficiary would have responsibilities in seven areas, all of which are "standard engineering tasks" which "require engineering expertise." They are, "in order of importance":

1. [P]articipating in engineering design of a process system proprietary to [the petitioner].
2. [D]eveloping the component equipment of the system (cabinets, evaporators, large diameter burners, lathes, control systems);
3. [D]etermining customer specifications and customizing systems;
4. [I]nstalling/commissioning systems;
5. [T]echnical support at customer sites and customer training;
6. [D]ocumentation to demonstrate production conformity to specifications (quality control);
7. [T]roubleshooting and modifications.

The petitioner's Internet advertisement sought "an experienced operator on glass-working lathe" to work on a team that the petitioner was building "to demonstrate its equipment and to train customer operators." The advertisement also stated, in part, "Positions are available for those with hands-on operator experience and process knowledge in the making of glass preforms for optical and electronic applications."

The three Internet advertisements are from other companies, two of which sought a process engineer and one a development engineer. They required a bachelor's degree in engineering or

another field related to the work, such as physics, chemistry, or material science.

The denial of the petition stated that the petitioner failed to establish that the proffered position requires a degree at the bachelor's level. In this regard, the director found that the duties of the proffered position resemble an engineering technician's, and the director cites to page 75 of the Department of Labor's *Occupational Outlook Handbook, 2000-2001 edition (Handbook)* for the proposition that an associate degree in engineering is the typical requirement for engineering technician positions. Also, the director discounted the three Internet job announcements (1) as not comparable to the proffered position, because they were for engineer, not engineer technician, positions, and (2) as not numerous enough to establish an industry standard.

In addition, the director discounted the resume from a competitor's engineer employee as irrelevant, because that employee was not an engineering technician. Furthermore, the director pointed to the petitioner's own Internet vacancy announcement, which specified no educational requirements, as evidence that the petitioner normally does not require a bachelor's degree in a specific specialty. The denial also noted, that there was no evidence that any of the petitioner's seven engineer employees worked in a position similar to the one proffered.

On appeal, counsel contends that the evidence qualifies the proffered position as a specialty occupation under at least the last three sections of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel's assertions will be addressed below, as necessary.

To determine whether a proffered position qualifies as a specialty occupation, the AAO looks beyond the position title. It carefully reviews all the evidence relevant to the duties of the position and what the exercise of these duties entails in terms of knowledge, education, special training, skills, and experience.

As the following discussion of each criterion will show, the facts presented by petitioner are not sufficient to establish the proffered position as a specialty occupation under any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

**I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.  
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).**

The issue here - not directly addressed by the appeal - is whether the duties of the proffered position require, as a

minimum for entry, a bachelor's degree or equivalent in a specific specialty.

As it often does on specialty occupation issues, the AAO has considered the *Handbook*. As the denial of the petition, in part, correctly asserted, the occupation of engineering technician, as described at pages 96-98 of the *Handbook*, is similar to the duties of the proffered position, but is one for which most employers require no more than a two-year associate degree in engineering technology.

The question is whether the evidence presented by the petitioner and counsel establishes that, regardless of any similarities with engineer technician duties, there are duties of the proffered position that materially differ from an engineering technician's work and are clearly those of an engineer. As discussed below, the record does not provide an affirmative answer.

The above cited *Handbook* section indicates, in part, that engineering technicians employ engineering principles to solve technical problems in research and development, manufacturing, sales, quality control, and inspection and maintenance; that, in manufacturing, they may assist engineers in design, development, or production of products; that, in research and development, they may assist engineers in a variety of ways, including design and building and setting up equipment. In its section on engineers, the *Handbook*, at page 86, states that the two and four-year technology-engineer college programs prepare people for "practical design and production work, rather than for jobs that require more theoretical and scientific knowledge."

Regardless of counsel's contrary contention, the evidence in the record is insufficient to establish that proffered position requires more than an engineering technologist. The duties as enumerated and described in the record do not appear to be outside the sphere of an engineering technologist's practical employment of engineering principles as described in the *Handbook*.

Also, a consistent aspect in the CEO's descriptions of the proffered duties is that they will be part of a team effort involving engineers. The record does not establish the extent, if any, that the position holder would himself be operating on an engineer's level, rather than as an engineering technician under the guidance of engineers.

Because the job descriptions and supporting evidence are insufficient to establish that the proffered position involves the application of engineering principles at a theoretical or practical level above what should be expected of an engineering technician, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

The AAO disagrees with the contention in counsel's brief that the petition should have been granted on each of the two qualifying grounds at this section of the regulation.

A. Degree requirement common to the industry.

Counsel contends that the three Internet advertisements are sufficient to establish that an engineering degree is a common requirement in the petitioner's industry for the type of work involved in the proffered position. Counsel also here asserts that her position is supported by the resume of the applicant who was found to be lacking in the required skill level, even though that applicant had a bachelor of engineering degree from a university in India.

Counsel's position is not substantiated by the evidence. Even if the three Internet advertisements were sufficient in number, they do not establish that they relate to positions that are parallel to the proffered one: their job descriptions do not contain sufficient detail for a conclusion that they closely resemble the duties required of the proffered position. Aside from this deficiency in content, the AAO agrees with the director's determination that the number of advertisements submitted are insufficient to establish an industry-wide requirement. Finally, the rejected applicant's resume has no persuasive weight on this or any other issue on appeal.

B. Degree necessitated by the complexity or uniqueness of the position.

The AAO agrees with counsel that the petitioner's Internet advertisement should not be viewed as determining the actual duties of the proffered position. Also, the AAO does not dispute counsel's position that the required duties evolved substantially beyond what was stated in the Internet advertisement. (The AAO has also determined that that "evolution" was still within the general parameters of the duties as the CEO described them in his letter accompanying the Form I-129, which was filed almost a month after the advertisement.) Accordingly, the AAO considered all the job-duty evidence, including the CEO's information that the decision to expand duty requirements followed the employment of an experienced person without an engineering degree who proved to lack the requisite analytical ability.

However, the totality of the petitioner's evidence fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in engineering or another particular specialty could perform them. In fact, the evidence fails to establish that the duties have complexity beyond the reach of a person with less than a four-year degree in technical engineering.

**III. Degree or its equivalent as the employer's normal requirement for the position.**

**-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).**

The record establishes that this is the first time that the position in question has been proffered. In the absence of a prior hiring history, the petitioner cannot provide any relevant evidence on this issue.

In this section of the appeal, counsel asserted, in part, "Design, conceptualization and manufacturing machinery are inherently engineering tasks." This perspective is not relevant to whether the petitioner had established a normal practice in hiring. However, the AAO did consider it in its deliberations on the other aspects of the appeal.

**IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).**

The evidence does not establish that the proffered position would involve duties that would be so particularly specialized or complex as to require knowledge usually associated with a bachelor's or higher degree.

Counsel correctly asserts that a particular position may have such complex duties to qualify as a specialty occupation, regardless of the usual status of the general occupation to which it belongs.

However, counsel's citation of the 1998 administrative appeal decision, that a position in a wheel alignment company was sufficiently complex as to be analogous to a mechanical engineer, is not persuasive.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizen and Information Services (CIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Also, while 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service (now CIS) precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In any event, the wheel-alignment case is not apposite to the facts here, which involve a different position, a different industry, different equipment, and a different record of evidence. Accordingly, the AAO does not concur with counsel's assertion that the duties of the proffered position are "clearly parallel" to those in the wheel-alignment case.

Counsel asserts that complexity beyond that required of similar positions is shown by (1) the unsuccessful hire of the experienced but not-degreed person that has already been mentioned, and (2) the fact, corroborated by an e-mail message filed with the brief, that an applicant with an engineering degree from India was found unqualified. These facts are unpersuasive. They do not identify what specific duty-performance tasks were beyond the capabilities of these two persons. Also, they do not adequately explain in what particulars those tasks were so specialized or so complex as to require knowledge usually associated with a bachelor's degree or higher.

As addressed in the discussion above, the evidence fails to establish that the proffered position qualifies as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1). Accordingly, the director's denial of the petition shall not be disturbed.

Aside from the decision of the director, it should be noted that the record fails to establish that the beneficiary meets the qualifications for a specialty occupation, even if one had been established. Because this case has been decided on other grounds, the discussion will be brief.

Despite its wording, the evaluation does not establish that the beneficiary holds the equivalent of a bachelor's degree in electrical engineering. The evaluation's conclusion was based, in part, on the educational evaluation firm's crediting work experience as the equivalent of U.S. college courses. Exercising its discretion to decide the appropriate weight to accord expert-type evidence, the AAO does not recognize the opinions of educational evaluation services on the educational equivalence of work experience. Accordingly, the beneficiary does not qualify for service in a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2).

Furthermore, review of the record did not reveal sufficient evidence to qualify the beneficiary under any other provision of 8 C.F.R. § 214.2 (h)(4)(iii)(C).

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. The petition is denied.

[092403/I/AAOMTK01/E0209953273.H1B]