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FILE: WAC 02 276 52340 Office: CALIFORNIA SERVICE CENTER Date:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a sewing factory seeks to employ the beneficiary as a textile engineer. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because it is not a specialty occupation. Counsel states that it is a specialty occupation as the proffered position is an industrial engineer position. Counsel does not submit further documentation.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support; (3) the director's request for additional evidence, dated March 3, 2003; (4) the petitioner's letter that responds to the director's request, dated March 24, 2003; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a textile engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. The petitioner stated that it is a sewing factory established in 1987 and that it had nineteen employees. According to the job description submitted by the petitioner, the beneficiary would plan, direct, and coordinate activities concerned with design, modification, and maintenance of equipment and machinery in a garment manufacturing plant: establish standards and policies for pollution control, installation, modification, quality control, testing, operating procedures, inspection, and maintenance of equipment, according to engineering principles and safety regulations. She would also direct maintenance of the equipment and machinery and coordinate requirements for new designs and maintenance schedules for equipment and machinery. In its response to the director's request for further evidence, the petitioner further described the job duties as follows:

[The beneficiary] will help us streamline our operation . . . . Once we receive a pattern, it is necessary to create a diagram (Phase I), which shows the technological order of the sewing operation. [The beneficiary] will create such an order for each job. This includes the following steps: 1) measure seams of the pattern, 2) work out the sequence of assembling parts of the pattern; 3) determine the complication level of each operation; 4) determine the working time for each operation, and 5) divide the working load among the workers evenly. The creation of the technological order also entails the rearrangement of the sewing machines (Phase II) in a sequence that creates an assembly line order for the particular sewing operation, when assembling the pieces of the pattern. After the foregoing two diagrams are created, production begins. [The beneficiary] will provide a separate explanation to each worker for that worker's part of the operation; check the result and check the final quality of the clothing produced (Phase III).

The petitioner estimated that ten hours a week would be spent on Phase I, five hours a week on Phase II, and another five hours on Phase III. The petitioner stated that it required a candidate to possess a baccalaureate or higher degree in textile engineering.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classifications of textile technician and mechanical technician. The director stated that neither classification required a baccalaureate degree in a specific specialty for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the position is more analogous to an industrial engineer, and refers to the *Handbook's* description of the job duties for industrial engineers. Counsel asserts that such duties require a baccalaureate degree in a specific specialty.

Upon review of the record, the petitioner has established one of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The director described the position as a textile or mechanical technician, while the petitioner described it as an industrial engineer. Another analogous *Handbook* classification is industrial engineering technician or technologist. The position appears to be an amalgam position, incorporating elements of several *Handbook* classifications in both applied and theoretical areas. With regard to the *Handbook*'s description of technicians involved in the textile manufacturing industry, none of the specific jobs, such as fabric patternmaker or sewing machine operator are analogous to the proffered position. The petitioner's more detailed job description submitted in response to the director's request for further evidence suggests that the beneficiary's duties begin after a fabric pattern has been created and involve duties distinct from a technician's duties, such as quality control, and the ability to establish new working conditions, among other issues. While the proffered position does have duties that are indicative of a more theoretical industrial engineering, the job duties are much more specific to the application of textile engineering, which is more indicative of an engineering technology position. While the job duties of an industrial engineer do usually require a baccalaureate degree in engineering, engineering technologists, at times, can be hired after receiving a two-year associate degree in engineering technology.

The *Handbook* also examines the place of four-year engineering technology graduates in the greater engineering industry, and states that these graduates are not qualified to register as professional engineers under the same terms as graduates with degrees in engineering. In sum, while the position appears to have elements of both engineering technology and industrial engineering, the *Handbook* does not establish that such an amalgam position would require a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar businesses, neither counsel nor the petitioner provided any further information on similar positions with other garment manufacturing factories. The petitioner also did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its petition that the position was a new one, created to be more effective and efficient with its sewing factory. Therefore, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. As noted previously, the proffered position is an amalgam position within the garment manufacturing business. The beneficiary would be responsible for the design, coordination, and maintenance of equipment and work processes, duties that are quite distinct from those of textile technicians and that require much more complicated knowledge than the actual sewing of garments. In addition, the beneficiary would be responsible for quality control of final products, as well as making decisions on revised or improved work procedures and assignments, which is the work of industrial engineers. To the extent that they are depicted in the record, the duties of the position are managerial and the beneficiary does not appear to be assisting other personnel, but rather directing and planning the work of others. The beneficiary also would have significant oversight over the entire production process. As such, it appears reasonable that the petitioner would require the beneficiary to possess a degree in engineering technology or a related field to perform the duties of the position. Thus, the petitioner has established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the beneficiary's ability to perform the duties of the position, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), and 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the petitioner submitted an educational equivalency document from Academic and Professional International Evaluations, Inc., Los Alamitos, California. This document stated that the beneficiary's baccalaureate degree in textile engineering from the Polytechnical Institute of Yerevan, Armenia, is the equivalent of a U.S. degree from an accredited university or college. The petitioner has established that the beneficiary is qualified to perform the duties of the position.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the duties of the position..

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 sustained that burden. The director's decision of August 26, 2003 will be withdrawn and the appeal will be sustained. The petition will be approved.

**ORDER:** The appeal is sustained. The petition is approved.