

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



DEC 02 2004

FILE: LIN 03 216 52504 Office: NEBRASKA 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)

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a food product manufacturing business that seeks to employ the beneficiary as a Visionair service manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 the proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 Visionair service manager. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supplying service and support for "Idaho Steel/Kiremko" range of equipment, specific to Visionair optical sorting systems and Kiremko steam peelers. The petitioner indicated that a qualified candidate for the job would possess a college degree or equivalent technical training.

The director found that the proffered position was not a specialty occupation because it is an engineering technician position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, the petitioner states, in part, that the proposed duties are so specialized, complex, and unique that they can be performed only by a person with a bachelor's degree or equivalent training. The petitioner further states that the position requires "a minimum of three to five years training." As supporting documentation, the petitioner submits a document entitled "Visionair Technical Information and Requirements for Visionair Service Technician/Engineer", opinions from ██████████ of Idaho State University and ██████████ of Boise State University, and a declaration concerning the beneficiary's training.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not 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 AAO does not concur with the petitioner that the proffered position is a specialty occupation. A review of the Engineering Technician job description in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel the responsibilities of an engineering technician. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an engineering technician job. It is noted that the job duties also parallel the responsibilities of an industrial machinery installation, repair, and maintenance worker. Again, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for this position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for technician positions. One such position requires "2+ years experience in a maintenance-maintenance-related field or trade school graduate." This requirement is not the equivalent of a baccalaureate degree. Another

position is that of a product support engineer with requirements that include “at least two years experience in presales support” and “strong communication skills.” There is no mention, however, of a baccalaureate degree requirement. Another position is that of a process engineer with ConAgra, whose duties include working closely with R&D process engineers in new product development. Although the ConAgra job does require a related baccalaureate degree, the petitioner has not demonstrated that the advertised position is parallel to the instant position. The duties of the ConAgra job are more complex than the duties of the proffered position. Thus, the advertisements have no relevance.

The record also includes an opinion from Professor ██████████ of Idaho State University, who states, in part, that the beneficiary holds the equivalent of a bachelor’s degree in industrial technology and that the beneficiary’s skills in machine operations and the use of tools are essential for high technology industries to produce products and maintain operations. The record also includes an opinion from Professor ██████████ of Boise State University, who states, in part, that the beneficiary possesses a unique and highly specialized set of skills that is of more value to an employer than individuals with a less specialized skill-set but in possession of a B.S. degree. Although the writers indicate that the beneficiary’s skills in machine operations and the use of tools are essential to the petitioner’s business, neither writer states that the proffered position requires a baccalaureate degree in a specific specialty.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has 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. As the petitioner does not address this issue on appeal, it will not be discussed further.

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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

The director also found that the beneficiary is not qualified to perform the duties of a specialty occupation. A review of the *Handbook* finds that most employers prefer to hire someone with at least a 2-year associate degree in engineering technology for an engineering technician position, and industrial machinery mechanics often learn their trade through 4-year apprenticeship programs that combine classroom instruction with on-the-job training. In this case, the beneficiary holds a foreign technical diploma that Professor Ferguson concluded “is beyond the level associated with a degree from a US junior college but not fully equivalent to [a] bachelor of science (BS) degree.” In view of the foregoing, the beneficiary is qualified for the proffered position. The petitioner may not be approved, however, because the proffered position is not a specialty occupation.

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.