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FILE: WAC 03 009 50769 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2004

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.

Mari Johnson

to 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 involved in the import and wholesale of tools and hardware. It seeks to employ the beneficiary as a mechanical engineer, and endeavors to classify him 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 the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184 (i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) completion of such experience in the specialty equivalent to the degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent or the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position is that of a mechanical engineer. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that mechanical engineers generally possess at least a bachelor's degree in engineering.

The petitioner seeks to qualify the beneficiary pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from [REDACTED] of Josef Silny and Associates, Inc. Mr. [REDACTED] stated that the beneficiary possessed the equivalent of an associates degree in aeronautical engineering based upon his foreign education. An experiential evaluation was also issued by Dr. [REDACTED] of Josef Silny & Associates. Dr. [REDACTED] is a member of the graduate faculty for the mechanical engineering department at the University of Miami. In that capacity he states that he has authority to grant transfer credits to individuals who studied at United States or foreign educational institutions. Dr. [REDACTED] opines that the beneficiary has the equivalent of a bachelor's degree in mechanical engineering based upon his education, training, and work experience. Dr. [REDACTED] issued his opinion on behalf of a credentials evaluation service, however. A credentials evaluation service may issue evaluations of individuals' foreign education, not work experience. An evaluator may offer an experiential evaluation only if the record establishes that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training

and/or work experience. 8 C.F.R. § 214.2 (h)(4)(iii)(D)(1). The record does not establish that Dr. [REDACTED] possesses this authority. Thus, his evaluation is given little weight and does not establish that the beneficiary holds the requisite degree to qualify him to perform the duties of the offered position. .

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The documentation recounting the beneficiary's work experience is insufficient in detail to determine that: the work experience included the theoretical and practical application of specialized knowledge required by the proffered position; the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the specialty occupation.

Beyond the decision of the director, it does not appear that the proffered position is a specialty occupation. The petitioner claimed on the Form I-129 that it is a company engaged in tool design and manufacturing, and that it wished to employ the beneficiary as a mechanical engineer. In its supporting letter dated October 4, 2002, however, the petitioner stated that it is a "full-scale import and wholesale company that carries several extensive lines of tools and hardware." The beneficiary's proposed duties include: planning and coordinating the manufacturing process of the production line, directing and coordinating product testing to ensure operational performance meets design specifications, altering or modifying designs to obtain specified functional and operational performance; and conferring with management, engineering and other staff regarding manufacturing capabilities, production schedules, and other considerations to facilitate the production process. While these certainly would be the duties of a mechanical engineer, it is unclear why a company that is engaged in the import

and wholesale of various lines of tools and hardware would need a mechanical engineer. There is no information in the record showing that this import and wholesale company has any manufacturing facilities in which the petitioner would be able to perform the duties of a mechanical engineer as they are listed by the petitioner. Accordingly, there is insufficient evidence to establish that the proffered position is in a specialty occupation. For this additional reason, the petition may not be approved.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.