



U.S. Citizenship  
and Immigration  
Services

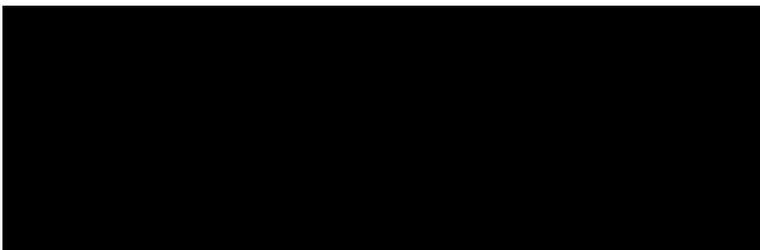


FILE: LIN 02 247 55035 Office: NEBRASKA SERVICE CENTER Date:

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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 provider of material and compounding and preparation services that seeks to employ the beneficiary as a plant 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 the proffered position is not a specialty occupation. On appeal, counsel contends that the proffered position qualifies as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 plant engineer. Evidence of the beneficiary's duties includes, in part: the Form I-129; the July 16, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: ensuring the safest possible operation of plant equipment, machinery, and building facilities; designing and implementing a repair and maintenance program; coordinating with the plant manager to prepare a plan of engineering activities; supervising engineering activities; monitoring, recording, and evaluating the results of engineering activities and reporting this to the company's president. The petitioner stated that a candidate must possess a bachelor's degree in mechanical or chemical engineering or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position parallel those performed by an industrial engineer. The director found that the petitioner materially changed the job duties in its response to the request for evidence by shifting the duties from managing all engineering activities to repairing and maintaining machinery. The director found that repairing and maintaining machinery corresponded with the beneficiary's qualifications, and that these duties would not require a knowledge mechanical engineering commensurate with baccalaureate-level training.

On appeal, counsel claims that the proffered position qualifies as a specialty occupation and requires at least a bachelor's degree in mechanical engineering or a related field. Counsel contends that the proffered position's duties are similar to those of a mechanical engineer. Counsel claims that the plant engineer will inspect plant machinery during operation, and supervise its testing, repair, and maintenance. According to counsel, the *Handbook* reports that a mechanical engineer would be employed in production operations in manufacturing or in maintenance, and that many are administrators or managers. Counsel maintains that the petitioner never materially changed the job duties; it merely amplified the details of the position. Finally, counsel contends that the regulations do not require a mechanical engineer to "perform complex engineering and design projects" as stated by the director. Rather, counsel states that the position must require at least a bachelor's degree in mechanical engineering.

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 finds that the director erroneously found that the petitioner materially changed the proffered position's duties in its January 8, 2003 letter. Only one duty mentioned in the letter, that of designing tools necessary to meet product specifications, seems incongruous with the initial job description. This one duty, the letter indicated, would be performed on an as-needed basis. Thus, the AAO finds that no material change occurred in the job description.

The AAO now considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A careful review of the *Handbook* discloses that the duties of the proffered position more closely resemble those performed by supervisors of industrial machinery mechanics and machinery maintenance workers. According to the *Handbook*, industrial machinery mechanics and machinery maintenance workers do not require a bachelor's degree. The DOL reports that industrial machinery mechanics maintain and repair machinery in a plant or factory by detecting minor problems and correcting them before they become major problems. For example, after hearing a vibration from a machine, the mechanic must decide whether it is due to worn belts, weak motor bearings, or some other problem. After diagnosing the problem, the industrial machinery mechanic disassembles the equipment to repair or replace the necessary parts. When repairing electronically controlled machinery, mechanics may work closely with electronic repairers or electricians who maintain the machine's electronic parts. Once a repair is made, mechanics perform tests to ensure that the machine is running smoothly. Although repairing machines is the primary responsibility of industrial machinery mechanics, they also may perform preventive maintenance and install new machinery. Machinery maintenance workers, the DOL reports, are responsible for cleaning and lubricating machinery, performing basic diagnostic tests, checking performance, and testing damaged machine parts to determine whether major repairs are necessary. In carrying out these tasks, maintenance workers must follow machine specifications and adhere to maintenance schedules. Maintenance workers may perform minor repairs, but major repairs are generally left to machinery mechanics.

The duties of the proffered position are comparable to those of a supervisor of industrial machinery mechanics and machinery maintenance workers. For example, the proffered position's duties of conducting "visual inspections of equipment and machines"; supervising the "test/dry run of all equipment prior to actual operation"; supervising "maintenance work on plant equipment, machines, and facilities such as cleaning, oiling, calibration, re-tooling, plugging of leaks on air and water lines, and tightening of bolts to reduce equipment noise"; and "[determining] which equipment/machinery/parts need repair, and schedule their

pullout and replacement in the production line” are all encompassed within the job description of industrial machinery mechanics and machinery maintenance workers.

According to the DOL, machinery maintenance workers and industrial machinery mechanics do not require a bachelor’s degree to perform their duties. Furthermore, the DOL states that these workers may advance to work as supervisors. Based on the information in the *Handbook* and the evidence in the record, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position.

There is no evidence in the record that would establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

Nor is there evidence that would establish the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): that the petitioner normally requires a degree or its equivalent for the position or that the nature of the specific 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. The petitioner does not aver to a past practice of requiring a bachelor’s degree in a specific specialty. Again, the proffered position’s duties are performed by a supervisor of industrial machinery mechanics and machinery maintenance workers, and according to the DOL, industrial machinery mechanics and machinery maintenance workers do not require a bachelor’s degree.

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 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.