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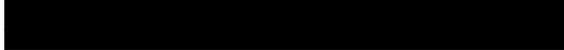
**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 02 129 50091 Office: CALIFORNIA SERVICE CENTER Date: **MAY 03 2004**

IN RE: Petitioner: 
Beneficiary: 

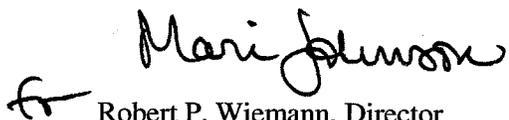
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 wholesaler of plumbing materials, tiles, carpets, and rugs that seeks to employ the beneficiary as a mechanical engineer. The petitioner 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 submits a brief.

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 mechanical engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 13, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: maintenance, servicing, and operation of all corporate equipment, vehicles,

machines, and appliances; performing inventory of all said equipment; and recommending acquisition of any equipment needed. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in mechanical engineering.

The director found that the proffered position was not a specialty occupation because the job is not a mechanical engineering position; it is an automotive and mechanical 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, counsel states that the proffered position entails highly technical and complex engineering tasks, and that it is supervisory in nature; thus, it should be considered a specialty occupation. Counsel asserts that the evidence meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). Upon review of the record, however, 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.

Counsel states that the offered position is unlike that of an automotive or a mechanical technician, because the position involves supervising the maintenance of many different kinds of machinery, including trucks, forklifts, industrial machinery, an air conditioning system, and copier machines. Counsel notes that the equipment to be monitored is powered by gasoline, diesel, natural gas, and electricity; thus the position is made more complex and requires the skills of a mechanical engineer.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position differs from that of a mechanical engineer, whose focus is on researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices. On the other hand, the *Handbook* describes many categories of mechanics whose duties fit the proffered position, such as heavy vehicle and mobile equipment service technicians, diesel service technicians and mechanics, industrial machinery mechanics, and air-conditioning mechanics. None of these positions requires a bachelor's degree in engineering. The fact that the instant position is a supervisory technician/mechanic or that it requires knowledge of different types of machines does not mean that it requires a bachelor's degree in engineering.

The record does not include any documentation to support the complexity or uniqueness of the proffered position. 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 mechanical engineering. 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)(2) or (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 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.