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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: LIN 03 253 51912 Office: NEBRASKA SERVICE CENTER Date: NOV 08 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiernann".

Robert P. Wiernann, 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 fluid dairy production and distribution business that seeks to employ the beneficiary as a training and development specialist. 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. On appeal, counsel submits a brief, and a letter from the petitioner's director of manufacturing.

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 training and development specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 11, 2003 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 primarily entail setting up, performing general maintenance, and troubleshooting all production-packaging machines and training new employees to operate production-packaging machines. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in agricultural engineering.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. 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, in part, that the proposed duties, which include performing the duties associated with the petitioner's packing department, are so complex that a baccalaureate degree in engineering is required. Counsel states further that the petitioner's engineering staff previously performed the proposed duties. Counsel also states that the record contains an expert opinion as supporting documentation. Counsel additionally submits a letter from the petitioner's director of manufacturing who states, in part, as follows:

Prior to the creation of the Training and Development position, the packaging department had a shift manager on each of the three shifts. The managers were required to have machine operator and supervisory experience. The shift managers did not have the engineering training to perform the professional job duties related to mechanical programming, maintenance, making modifications and troubleshooting. Nor were the shift managers qualified to provide adequate training to the machine operators. The shift [managers] did not independently make system modifications. With the three shift managers overseeing the packaging department, it required a staff engineer to be [sic] come in and perform the technical job duties and train the managers on any modifications.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 proffered position is primarily that of a supervisory industrial machinery mechanic. It is noted that the petitioner's October 6, 2003 letter indicates that the majority of the beneficiary's time would be spent setting up, performing general maintenance, and troubleshooting all production-packaging machines. In its

Handbook, 2004-2005 edition, under the category of Industrial Machinery Installation, Repair, and Maintenance [REDACTED] the DOL states, in part, as follows:

Industrial machinery mechanics, also called industrial machinery repairers or maintenance machinists, are highly skilled workers who maintain and repair machinery in a plant or factory. . . . Increasingly, mechanics need electronic and computer skills in order to repair sophisticated equipment on their own.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a supervisory industrial machinery mechanic job. Information on page 557 of the *Handbook* finds that industrial machinery mechanics often learn their trade through 4-year apprenticeship programs that combine classroom instruction with on-the-job training. Machinery maintenance workers may gain additional skills to make more complex repairs or work as supervisors.

The record contains an opinion from [REDACTED] Electronics Manufacturing Instructor at East Metro Opportunities Industrialization [REDACTED] in St. Paul, Minnesota, who asserts that positions such as the proffered position require a bachelor's degree in a specialized engineering field or its equivalent [REDACTED] [REDACTED] however, does not provide any evidence in support of his assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the opinion is accorded no weight.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for a plant engineer manager and a process performance engineer. There is no evidence, however, to show that the advertised positions are parallel to the instant position. The plant engineer manager advertisement does not include a description of duties. Therefore, it cannot be determined whether the position is similar to the proffered position. The petitioner also has not demonstrated that the proffered position is as complex as the advertised process performance engineer position, whose duties include performing technical, economic, and operational feasibility analyses and promoting the use of alternative fuels and raw materials (AFR) by providing the expertise to evaluate AFR in respect to their impact of AFR on the process and developing and implementing solutions to eliminate/reduce impact of AFR on the process. Thus, the advertisements have little relevance.

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 states that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 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.