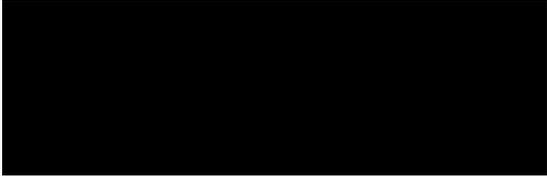


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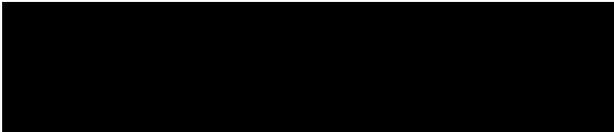
FILE: WAC 03 104 54549 Office: CALIFORNIA SERVICE CENTER Date:

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. 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 skilled nursing facility that seeks to employ the beneficiary as a maintenance 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. Counsel states that the position is a specialty occupation. Counsel submits no further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence, dated July 8, 2003; (4) the petitioner's letter that responds to the director's request, dated September 29, 2003; (5) the director's denial

letter; and (6) 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 maintenance engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary would maintain the petitioner's equipment and systems; direct technical personnel in maintenance use and determine the methods, procedures and conditions for maintaining equipment; direct activities to ensure that maintenance, installation and testing of systems conform to code requirements and specification; direct and coordinate the operation, maintenance and repair of equipment and systems; use computer-assisted engineering and design software and equipment to perform engineering tasks; evaluate systems and recommend design modifications or changes in systems requirements; devise and select instrumentation and apparatus used for testing of mechanical, structural or electrical equipment to formulate engineering design and evaluation decision; and diagnose cause of electrical or mechanical malfunction or failure of operational equipment and perform preventive and corrective maintenance.

In its response to the director's request for further evidence, the petitioner stated that 45 per cent of the beneficiary's time would be spent on managing all functions related to uninterrupted flow of utilities and systems in physical buildings, including heating, ventilating and air conditioning, pumps, cooling towers, controls and exhaust. Another 20 per cent of the beneficiary's time would be spent in the supervision, selection, hiring and training of all technicians. The petitioner indicated that 10 per cent of the beneficiary's time would be spent in the following areas: tracking budget and approving expenditures; processing of purchase orders and assuring prompt and accurate payment of invoice; developing long range capital infrastructure needs for the development of a hospital budget. According to the petitioner, the beneficiary would not supervise any employees. The petitioner also indicated that the minimum education credential required for the position was a bachelor's degree in engineering.

The director denied the petition and found the position analogous to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of engineering technician. The director stated that this classification did not require a baccalaureate degree in a specific specialty for entry into the position. 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 director's decision contains discrepancies and inconsistencies, and points out that the director referred to the position of administrative assistant in the decision. Furthermore counsel states that there is no similarity between the duties of a maintenance engineer and an engineering technician. Counsel states that the proffered position does not involve duties of assisting engineers, but rather the duties are broad in scope and involve directing personnel and formulating engineering design and evaluation decisions.

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. As correctly noted by the director, the proffered position appears to be that of an engineering technician who is responsible for maintaining and operating the physical systems infrastructure within a single skilled nursing facility. The petitioner indicated that the beneficiary would supervise no other personnel, although apparently the beneficiary would be responsible for hiring and supervising other technical non-staff technicians. Although the petitioner mentioned duties involving engineering design, without more persuasive evidence as to the actual physical infrastructure, the record does not establish that any design work would be done at the baccalaureate skill level. The AAO agrees with the director that the proffered position does not appear to be an engineering position, but rather an engineering technician position.

With regard to engineering technicians, the 2004-2005 edition of the *Handbook* states: "Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance." With regard to training for engineering technicians, the *Handbook* also states: "Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology." Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel provided four job vacancy announcements in its response to the director's request for further evidence. These job announcements included a maintenance engineer responsible for the performance of manufacturing process equipment through a plant; a maintenance/project manager for the primary concessionaire in Yosemite State Park, and two maintenance engineer positions within universities. None of these companies or institutions is analogous to the petitioner. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. The petitioner provided no documentation as to any previous or current maintenance technicians and their academic credentials. Therefore the petitioner cannot meet this criterion.

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 majority of duties of the position appear routine. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as an engineering technician within a skilled nursing facility, or of any complex or specialized systems that form part of the petitioner’s physical building infrastructure. Other duties described by the petitioner, such as the processing of purchase orders and assuring prompt and accurate payment of invoices; or developing long range capital infrastructure needs for the development of a hospital budget, either do not appear relevant to the proffered position which concerns a skilled nursing facility, or do not appear to require the specialized knowledge inherent in a baccalaureate degree in a specific specialty, such as engineering. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.