



U.S. Citizenship  
and Immigration  
Services

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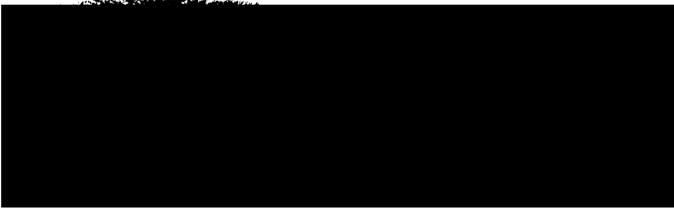


FILE: SRC 03 187 50071 Office: TEXAS SERVICE CENTER Date: **OCT 25 2004**

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

EXHIBIT COPY

Identifying information deleted to  
prevent disclosure of information granted  
confidentiality

**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 operates retail clothing stores. It seeks to employ the beneficiary as a maintenance supervisor. 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 submits a brief and previously submitted evidence.

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 maintenance supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail applying complex principles of heat transfer, hydraulics, and wiring to ensure systems perform properly; supervising and evaluating the work of others who perform the maintenance and repair of the stores; determining the best solutions for the design, installation, repair, and upgrade of mechanical systems; choosing contract workers to carry out installation, maintenance, and repairs; and analyzing safety regulations. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent in mechanical or electrical engineering.

The director determined that the proffered position was not a specialty occupation. According to the director, information from the Department of Labor (DOL) indicated that the duties of the proffered position were not performed by electrical and electronics engineers; they were performed by electrical and electronics installers, repairs, and maintenance experts, positions which did not require a bachelor's degree. The director found that the evidence in the record did not support the petitioner's requirement of a baccalaureate degree.

On appeal, counsel contends that the director mischaracterized the proffered position and that the *Dictionary of Occupational Titles (DOT)* reveals that its duties are performed by a mechanical engineer, a position requiring a bachelor's degree or its equivalent in engineering. Counsel maintains that the petitioner submitted sufficient evidence documenting its need for the services of a maintenance supervisor, and notes that the submitted leases, licenses, and tax returns demonstrate the expansiveness of the petitioner's business.

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 first 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 Department of Labor's (DOL) *Occupational Outlook Handbook* (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.

Counsel's assertion that the proffered position is similar to a mechanical engineer is not persuasive. The *Handbook* discloses that a mechanical engineer would not perform the duties of the proffered position:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also develop power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work.

The petitioner operates retail clothing stores; it does not engage in research, development, design, manufacturing, and testing of engines, machines, and other mechanical devices. Given the nature of the petitioning entity, it is very unlikely that a mechanical engineer would perform the duties of a maintenance supervisor.

The duties of the proffered position would be performed by a maintenance supervisor of general maintenance and repair workers who have skills in many different crafts. As described in the *Handbook*, general maintenance and repair workers repair and maintain machines, mechanical equipment, and buildings and work on plumbing, electrical, and air-conditioning and heating systems. They inspect and diagnose problems, determining how to correct them, frequently checking blueprints, repair manuals, and parts catalogs. General maintenance and repair workers perform routine preventive maintenance to ensure that machines run smoothly and building systems operate efficiently. They inspect drives, motors, and belts, check fluid levels, replace filters, and perform other maintenance actions.

The *Handbook* reports that employers do not require a bachelor's degree for a general maintenance and repair worker position, and that these workers may advance to maintenance supervisor. Consequently, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

There is no evidence in the record that would establish the second criterion - that a specific 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.

Since this is a newly established position, the petitioner cannot satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that it normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. As previously discussed, the duties of the proffered position are performed by a maintenance supervisor of general maintenance and repair workers, a position which does not require a baccalaureate degree in a specific specialty.

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.