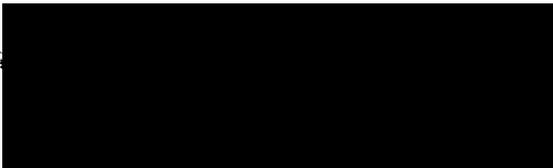




U.S. Citizenship
and Immigration
Services

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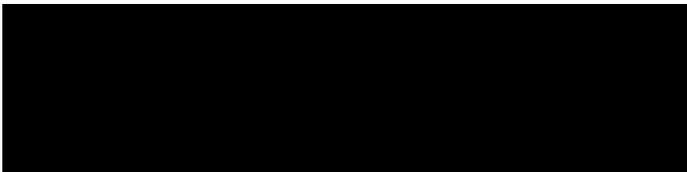


FILE: WAC 03 136 55506 Office: CALIFORNIA SERVICE CENTER Date:

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.

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

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 non-profit community service center that seeks to employ the beneficiary as an industrial 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 written statement and other 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 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 an industrial engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 19, 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 entail: determining the most effective uses of personnel, funds, and materials; developing systems to coordinate the activities of service providers; supervising service providers; supervising cost analysis and the development and expenditure of funds; developing and supervising a job and services evaluation program; and preparing reports for the executive committee. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in an unspecified field, although it may be inferred from the record that the petitioner requires a degree in industrial engineering.

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). On appeal, counsel contends that the duties of the proffered position parallel those described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* section on industrial engineers. Counsel states that the *Handbook* as well as literature published by the Institute of Industrial Engineers, Inc. indicate that a bachelor's degree is the minimum criteria for entry-level positions in this field. Counsel also asserts that since the AAO previously approved a petition for an industrial engineer, it should also approve the instant petition.

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.

Regarding counsel's contention that CIS has already determined that the proffered position is a specialty occupation since CIS approved another petition on behalf of an industrial engineer, the director's decision does not indicate whether he reviewed the prior approval, and this record of proceeding does not contain all of the supporting evidence submitted to the service center in the prior case.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would be in violation of paragraph (h) of 8 C.F.R. § 214.2, and would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be unreasonable to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. According to the *Handbook*, the majority of industrial engineers work in manufacturing industries, where their main function is to make a higher quality product as efficiently and as safely as possible. Industrial engineers may also work in consulting services, healthcare, and communications. Some of the phrases in the proposed job description resemble those found in the *Handbook's* description of the duties of an industrial engineer; however, because the scope of the petitioner's operations is so far removed from manufacturing, more detail is required to understand why and how an industrial engineer is necessary in the petitioner's context. The job description provided is vague and generic and contains no details to illustrate how an industrial engineer would improve the petitioner's performance in providing legal, educational, social, and health services to the Hispanic community of Reno.

The *Handbook* contains other job categories to which the instant position might be more aptly compared. For example, the *Handbook* notes the following duties under the title of social and community service managers:

Plan, organize, or coordinate the activities of a social service program or community outreach organization. Oversee the program or organization's budget and polices regarding participant involvement, program requirement, and benefits. Work may involve directing social workers, counselors, or probation officers.

The proffered position might also be akin to a general or operations manager. According to the *Handbook*, such managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources. According to the *Handbook*, neither social/community service managers nor general/operations managers require a bachelor's degree in industrial engineering.

The petitioner submitted no information regarding parallel positions in the petitioner's industry, nor any evidence from professional associations regarding an industry standard. The record also fails to document 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 petitioner is unable to demonstrate the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that it normally requires a degree or its equivalent for the position, because the proffered position is new. Regarding the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), 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 industrial engineering. As noted above, the duties are described in such generalized terms that it is difficult to determine what concrete projects, tasks, or duties the beneficiary would undertake. To the extent that the proffered position is depicted in the record, it appears that individuals with varying backgrounds, from social work to business administration, would be able to perform the duties. 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.