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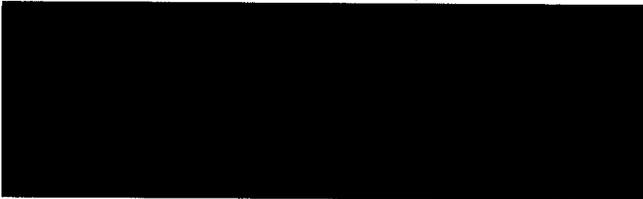
APR 05 2005

FILE: WAC 03 180 50370 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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 is a residential facility for developmentally disabled patients. It seeks to employ the beneficiary as a mechanical 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 position is not a specialty occupation. On appeal, the petitioner states that the proffered position is a specialty occupation.

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 mechanical design engineer. 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 designing new heating, ventilation, and air conditioning (HVAC) systems by applying engineering principles; conferring with the architects of the proposed projects before designing systems; modifying and developing the HVAC system to newly constructed buildings or remodeled facilities; analyzing modifications to equipment and performing requirements to determine the system's technical details; analyzing test data and reports to determine design functionality and performance; providing technical information and data to drafters; directing and coordinating construction and installation to ensure conformity with design specifications; evaluating the old systems and recommending design modifications to eliminate malfunction; and ensuring proper maintenance of systems. The petitioner stated that it requires a baccalaureate degree in mechanical engineering.

Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director determined that the proffered position was analogous to engineering and electronics technicians, occupations that do not require a baccalaureate degree.

On appeal, the petitioner states that the director's determination is a mischaracterization of the proposed position because a mechanical engineer performs the duties of the proposed position. The submitted approval notices of similar positions, the petitioner asserts, demonstrate that the proffered position is parallel to a mechanical engineer. The petitioner points out that the mechanical, electrical, and electronics fields differ from one another. According to the petitioner, the *Handbook* describes electrical and electronics technicians as *helping* to design, develop, test, and manufacture electronic and electrical equipment. The petitioner compares this to the beneficiary who will be entirely responsible for design.

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 *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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 information about the duties and educational requirements of particular occupations.

The petitioner states that the proffered position is parallel to a mechanical engineer. We disagree. The *Handbook* describes mechanical engineers as researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices. Although the petitioner asserts that the beneficiary's duties reflect those of a mechanical design engineer, the evidence in the record does not support this contention. The petitioner is in the business of operating intermediate care facilities for the developmentally disabled. The residential lease agreement entered into by the petitioner for the premises located at [REDACTED] explicitly describes the property as a "4 bedroom single family residential" and that the beneficiary is allowed to rent the property as a "health facility." The lease also states that the premises are in good order and repair; in light of this, the services of a mechanical design engineer would not be required for this property. Since no documents in the record establish that the petitioner is or will be constructing or renovating new facilities, no evidence supports the contention that the beneficiary will perform the duties of a mechanical engineer. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The *Handbook* reveals that some of the beneficiary's duties are performed by HVAC technicians, an occupation that does not require a bachelor's degree. The *Handbook* states:

Heating, air-conditioning, and refrigeration mechanics and installers—also called technicians—install, maintain, and repair such systems. Because heating, ventilation, air-conditioning, and refrigeration systems often are referred to as HVACR systems, these workers also may be called HVACR technicians.

Heating, air-conditioning, and refrigeration systems consist of many mechanical, electrical, and electronic components, such as motors, compressors, pumps, fans, ducts, pipes, thermostats, and switches. In central heating systems, for example, a furnace heats air that is distributed throughout the building via a system of metal or fiberglass ducts. Technicians must be able to maintain, diagnose, and correct problems throughout the entire system. To do this, they adjust system controls to recommended settings and test the performance of the entire system using special tools and test equipment.

Technicians often specialize in either installation or maintenance and repair, although they are trained to do both. Some specialize in one type of equipment . . . Technicians may work for large or small contracting companies or directly for a manufacturer or wholesaler. . . . Heating and air-conditioning mechanics install, service, and repair heating and air-

conditioning systems in both residences and commercial establishments. *Furnace installers*, also called *heating equipment technicians*, follow blueprints or other specifications to install oil, gas, electric, solid-fuel, and multiple-fuel heating systems. *Air-conditioning mechanics* install and service central air-conditioning systems. After putting the equipment in place, they install fuel and water supply lines, air ducts and vents, pumps, and other components. They may connect electrical wiring and controls and check the unit for proper operation. To ensure the proper functioning of the system, furnace installers often use combustion test equipment, such as carbon dioxide and oxygen testers.

After a furnace has been installed, heating equipment technicians often perform routine maintenance and repair work to keep the system operating efficiently. During the fall and winter, for example, when the system is used most, they service and adjust burners and blowers. If the system is not operating properly, they check the thermostat, burner nozzles, controls, or other parts to diagnose and then correct the problem.

During the summer, when the heating system is not being used, heating equipment technicians do maintenance work, such as replacing filters, ducts, and other parts of the system that may accumulate dust and impurities during the operating season. During the winter, air-conditioning mechanics inspect the systems and do required maintenance, such as overhauling compressors.

The beneficiary's duties which resemble those of an HVAC technician are: directing and coordinating construction and installation to ensure that products and systems conform to design specifications, evaluating the old systems and recommending design modifications to eliminate malfunction, and ensuring proper maintenance of systems. The duties of an HVAC technician do not require a baccalaureate degree under the *Handbook*.

No evidence in the record satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): 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. No evidence shows that the industry requires a degree or that the industry's professional association has made a degree a minimum entry requirement. No letters or affidavits have been submitted by the petitioner from firms or individuals in the industry attesting that such firms "routinely employ and recruit only degreed individuals."

No evidence satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the employer normally requires a degree or its equivalent for the position.

The petitioner did not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires showing 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. No evidence in the record supports the petitioner's assertion that the beneficiary would actually perform the duties of a mechanical

engineer. And as shown by the *Handbook*, some of the beneficiary's duties are performed by an HVAC technician, an occupation that does not require a baccalaureate degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

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.