

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

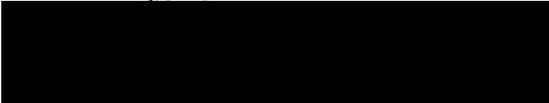
**PUBLIC COPY**

D2



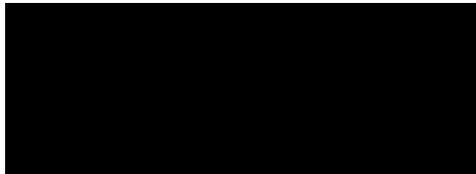
FILE: WAC 03 211 52516 Office: CALIFORNIA SERVICE CENTER Date: **APR 21 2005**

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 director of the California 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 manufacturer of medical diagnostic tests, with 222 employees. It seeks to employ the beneficiary as a manufacturing quality engineer. The director denied the petition based on his determination that the proffered position did not meet the requirements for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's October 30, 2003 request for evidence; (3) the petitioner's responses to the director's July 28 and October 30, 2003 requests for evidence; (3) the director's denial letter; and (4) Form I-290B, with a letter from the petitioner. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a manufacturing quality engineer. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s July 7, 2003 letter of support; and its October 14, 2003 and January 16, 2004 responses to the director’s requests for evidence.

At the time of filing, the petitioner stated that it required the beneficiary’s services to oversee its manufacturing operations in the United States and to serve as a liaison with its plant in Mexico, but provided no information on the specific duties he would perform. In response to the director’s July 28, 2003 request for evidence, however, the petitioner indicated that the beneficiary would be responsible for all quality-related activities associated with the production of its vitro diagnostic medical devices at its plant in Mexico, ensuring compliance with “GMP/QSR requirements, ISO standards, United States Customs and Mexican Customs regulations, customer approved procedures and finished product specifications.” It stated these responsibilities would require 75 percent of the beneficiary’s time and involve the following duties:

- Maintain a safe working environment for employees;
- Ensure availability of appropriate, required QC inspection materials and supplies;
- Communicate with the production manager and plant manager, as well as the import broker to ensure efficient and timely production of a quality product;
- Provide training for QC inspectors in assembly, pouching and packaging inspection activities and in recognizing nonconforming product, material defects and procedures for copying with such materials;
- Provide staff training for GMP/QSR and ISO regulations, and maintain training program to document proper skills training for employees;
- Ensure facility and process compliance with GMP/QSR requirements, ISO standards, approved procedures and product specifications;
- Act as contact for all quality audits;
- Interface with customers and regulatory agencies as needed;
- Monitor corrective/preventative actions to ensure proper documentation of such activities according to approved procedures when defects or problems are found;
- Ensure finished products meet approved specifications and are fit for use;

- Ensure proper storage and handling of materials and products to ensure compliance with specifications, including labeling and segregation of approved and quarantined materials;
- Determine and direct additional inspections according to ANSI sampling plans when necessary to address quality concerns;
- Oversee and approve rework process as needed;
- Develop and monitor a trending system to track and troubleshoot product defects;
- Update and translate procedures and policies as needed;
- Provide proper control of approved documents to comply with copy control procedures;
- Provide review of device history records;
- Suggest and implement process improvement projects;
- Ensure consistent and proper monitoring of temperature and humidity; and
- Act as a resource for all employee quality-related concerns.

The petitioner indicated that the remaining 25 percent of the beneficiary's time was to be spent in overseeing and managing the petitioner's SLI validation program in the United States, requiring him to ensure that the equipment IQ/OQ/PQ and process validations were performed as required and to generate a validation protocol and reports as required for each activity.

To determine whether these duties are those of 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 his denial, the director, relying on the 2002-2003 edition of the DOL *Handbook*, found the job duties provided by petitioner to describe a managerial position. The AAO agrees. The proffered position is not that of a chemical engineer, as asserted by the petitioner.

In its response to the director's October 30, 2003 request for evidence, the petitioner stated it had a practice of hiring degreed individuals for positions "with managerial responsibilities overseeing employees who have direct contact with [its] product, such as Quality Inspectors, or who have responsibility and authority to direct the processes involved in manufacturing [its] products." The AAO finds this statement to define the proffered position. The beneficiary's responsibilities for overseeing those who work in and who direct the petitioner's manufacturing and quality assurance processes at its plant in Mexico and its validation program in the United States are those of a manager.

As described in the record, the duties of the proffered position indicate that the beneficiary would fulfill his duties through subordinates, a conclusion supported by the organizational chart and employee list submitted by the petitioner. Based at the petitioner's facility in the United States, the beneficiary would "communicate"

with the plant and production managers at the petitioner's facility in Mexico. In the United States, he would oversee a quality control staff, led by an individual responsible for the daily supervision of the petitioner's quality inspectors. This description indicates that the beneficiary would be removed from the day-to-day oversight of quality control activities. While responsible for ensuring the quality of the petitioner's diagnostic devices and for the range of activities needed to ensure that quality, he would not be required to perform a hands-on quality assurance role that might require the type of technical expertise the petitioner states can only be acquired through a degree in science or engineering.

The AAO notes that in describing the beneficiary's duties, the petitioner appears to have stated both that the beneficiary would be responsible for the supervision of its quality control personnel in Mexico and that he would not have such a responsibility. In its October 14, 2003 response to the director's first request for evidence, the petitioner identified the beneficiary as supervising both its Mexico- and United States-based quality assurance personnel. However, in answering the director's second request, it stated that he would "only be responsible for overseeing the quality operations in [its] . . . maquiladora, not the employees . . . ." This apparent inconsistency in the petitioner's description of the beneficiary's duties further calls into question the petitioner's contention that the beneficiary would require the technical expertise needed for direct involvement in the petitioner's quality control processes. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Rather than being comparable to a chemical engineer, as the petitioner contends, the AAO finds the proffered position to be closely aligned with the occupation of industrial production managers. As described at pages 51-52 of the *Handbook*:

Industrial production managers coordinate the resources and activities required to produce millions of goods every year in the United States. Although their duties vary from plant to plant, industrial production managers share many of the same major responsibilities. These responsibilities include production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments . . . .

Industrial production managers also must monitor product standards. Inspecting samples of finished goods and recording defects enables managers to statistically analyze quality control problems. While traditional quality control programs reacted only to problems that reached a certain significant level, newer management techniques and programs . . . emphasize continuous quality improvement. If the problem relates to the quality of work performed in the plant, the manager may implement better training programs or reorganize the manufacturing process, often based upon the suggestions of employee teams. If the cause is substandard materials or parts from outside suppliers, companies may work with their suppliers to improve their quality . . . .

Production managers usually report to the plant manager or the vice president for manufacturing, and may act as liaison between executive and first-line supervisors . . . . In many plants, one production manager is responsible for all aspects of production. In large plants with several operations . . . there are managers in charge of each operation, such as machining, assembly, or finishing.

In its discussion of the educational requirements imposed on individuals seeking employment as industrial production managers, the *Handbook* offers the following information:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college degree is required, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration (MBA). Some are former production-line supervisors who have been promoted. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates.

Although the *Handbook* indicates that a baccalaureate degree is required to work as an industrial production manager, it also identifies a wide range of educational backgrounds as being suitable for this employment. When attempting to establish a proffered position as a specialty occupation on the basis of a degree requirement, a petitioner must demonstrate that its position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close corollary between the required studies and the employment. Therefore, if a job can be performed by individuals who hold degrees unrelated to its duties, that job does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Accordingly, the AAO finds that the proffered position, as it closely resembles that of an industrial production manager, does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) -- a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. As already noted, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean a degree in a specific specialty directly related to the proffered position.

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4) -- that a 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. A review of the record finds the petitioner to have submitted no evidence to establish that its degree requirement is the norm within its industry, nor does the record indicate that the proffered position is so complex or unique that it can be performed only by a degreed individual. Accordingly, the AAO finds that the proffered position cannot be classified as a specialty occupation under either of the prongs of the second criterion.

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner submitted no documentation to establish its past hiring practices with regard to the proffered position, nor did it indicate that it had previously employed a quality assurance engineer. Instead, in response to the director's October 30, 2003 request for evidence, the petitioner stated that it had two employees in

positions similar to that of the manufacturing quality engineer and that both were filled with degreed individuals. However, the petitioner has provided no evidence to support its statements regarding its employment of these individuals or the degrees they purportedly hold. Simply going on record without the appropriate documentation will not satisfy the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has documented no past hiring practices with regard to the proffered position and has failed to establish that it imposes a degree requirement for similar positions within its operations. Accordingly, it cannot establish the proffered position as a specialty occupation under the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner prove that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. On appeal, the petitioner contends that the proffered position requires an individual who can understand the underlying science of its diagnostic devices, that it requires complex analytical skills, skills in writing and in setting up quality systems to ensure safe and effective devices, and that it involves responsibility for staff training and compliance with a range of quality control requirements. Contending that no one without academic training in one of the scientific fields has the knowledge or analytical skills to be able to “spot quality problems,” the petitioner states that the position must be filled by an individual with a baccalaureate degree in science or engineering, and several years of experience.

The AAO is not persuaded by the petitioner’s assertions that the proffered position must be filled by someone with a degree in science or engineering to enable him or her to spot substandard products. The petitioner has not established that the proffered position would require a quality assurance manager to personally identify product deficiencies as part of his overall responsibility for maintaining the quality of its products. Instead, the record describes a managerial position, removed from direct involvement with the quality assurance process. Moreover, the petitioner’s statements on appeal regarding the position’s complexity and the beneficiary’s need for a degree in science or engineering are not consistent with the information it previously provided. In its response to the director’s July 28, 2003 request for evidence, the petitioner indicated that its proffered position could also be filled by applicants with the appropriate experience. On the second page of its letter, the petitioner stated under the heading of “Job Specifications” that “[t]he job requires someone with a B.S. degree in science or engineering and/or 5 years of experience, or the equivalent, in a GMP/QSR and ISO certified maquiladora.” The petitioner’s stated willingness to accept five years of experience in lieu of a degree is also reflected in the language of three advertisements for the proffered position, submitted with the petitioner’s letter as proof that the job had been advertised. Although each advertisement lists more than one opening, the AAO has identified the position referenced by the petitioner as that of a “Clinical Lab Manager.” None of the three lab manager listings identifies the position as requiring a baccalaureate degree in science or engineering. Instead, each states that successful applicants must have clinical laboratory experience, technical and supervisory skills, knowledge of laboratory instrumentation, and budgeting and cost reduction expertise. Accordingly, the AAO does not find the petitioner to have established its proffered position as a specialty occupation under the specialized and complex threshold set by the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Therefore, based on its own review of the position's duties and the record before it, the AAO finds that the petitioner cannot establish its proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position meets the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.