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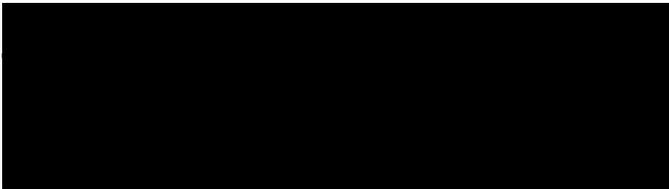
FILE: SRC 04 062 52590 Office: TEXAS SERVICE CENTER Date: **AUG 10 2005**

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 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 plastic parts and packaging products manufacturer that seeks to employ the beneficiary as an industrial 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 on the ground that the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits previously submitted evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner states that it requires at least a bachelor's degree in industrial engineering or its equivalent for the proposed position. The director concluded that based on evidence the beneficiary does not qualify for the proposed position. The beneficiary's previous employment, according to the director, does not relate to an industrial engineer. The director found the educational evaluation unpersuasive, and the beneficiary's training not equivalent to a baccalaureate degree in industrial engineering.

Counsel discusses the evidence and asserts that it establishes that the beneficiary qualifies for the proposed position. Included in this evidence are the following: a letter from Menofesa Metales No. Ferrosos, S.A. (Menofesa), marketing materials for three companies, memoranda prepared by the beneficiary, the beneficiary's curriculum vitae and certificates, excerpts from professional and scientific journals, curriculum vitae of two former Menofesa employees, an excerpt from the *Handbook*, and two educational evaluations and the resumes of the evaluators.

Upon review of the record, the petitioner has failed to establish that the beneficiary qualifies to perform the proposed position.

The beneficiary does not hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university; or a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2). Thus, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized

training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The submitted evaluations from Mr. Jeffrey B. Goldberg, Ph.D., of the University of Arizona and Mr. Trevor Schuyler Hale, Ph.D., of Ohio University attest that the beneficiary's work experience and training is equivalent to a U.S. baccalaureate degree in industrial engineering. However, no independent evidence in the record establishes that the evaluators are officials who have authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Therefore, the evaluations fail to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The educational evaluations also do not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) as no evidence demonstrates that the evaluators, Mr. [REDACTED] and Mr. [REDACTED] represent a credentials evaluation service specializing in evaluating foreign educational credentials.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Upon a review of the record, the beneficiary's training and work experience are insufficient to establish the equivalent of a bachelor's degree in industrial engineering.

The *Handbook*, a resource that the AAO routinely consults, describes an industrial engineer as follows.

Industrial engineers determine the most effective ways to use the basic factors of production—people, machines, materials, information, and energy—to make a product or to provide a service. They are the bridge between management goals and operational performance. They are more concerned with increasing productivity through the management of people, methods of business organization, and technology than are engineers in other specialties, who generally work more with products or processes. Although most industrial engineers work in manufacturing industries, they may also work in consulting services, healthcare, and communications.

To solve organizational, production, and related problems most efficiently, industrial engineers carefully study the product and its requirements, use mathematical methods such as operations research to meet those requirements, and design manufacturing and information systems. They develop management control systems to aid in financial planning and cost analysis and design production planning and control systems to coordinate activities and ensure product quality. They also design or improve systems for the physical distribution of goods and services. Industrial engineers determine which plant location has the best combination of raw materials availability, transportation facilities, and costs. Industrial engineers use computers for simulations and to control various activities and devices, such as assembly lines and robots. They also develop wage and salary administration systems and job evaluation programs. Many industrial engineers move into management positions because the work is closely related.

The employment letter from [REDACTED] states that the beneficiary had been employed there since October 1977 as a sales and marketing manager and then as a general manager of the foundry metallurgist division from October 1987 until the present (the letter is dated March 19, 2004). The employer attests that the sales and marketing duties “involved industrial management of metallurgical products and engineering productions and engineering production coordination with marketing and sales of the industrial products.” The employer also states that in the general manager role the beneficiary:

[F]ocused on industrial management of metallurgical products and production coordination. As such, his expanded responsibilities include: dosing, development, and implementation of foundry systems, process supply and installation of equipments and supply of pure metals, alloys and general products for the foundry process. [The beneficiary] is also responsible for technical consultancy in the starter, operation[,] and maintenance of equipment and products use. He has additional and direct responsibility of marketing development, quality control[,] and technical resolutions of after sales service, inventory purchase[,] and customer service.

Finally, [the beneficiary] has the direct responsibility for the expansion of the entire operation of engineering product development coordinating design, development of products and equipment, the aforesaid responsibilities are integral part of the industrial engineering process.

Menofesa indicates that it is “principally engaged in the business of [s]ales, distribution, installation, and technical support of equipments, [sic] metals, alloys[,] and products for the metallurgical industry and foundries. According to Menofesa, the beneficiary’s industrial engineering background was ideal.

Menofesa’s letter is not persuasive in establishing that the beneficiary’s duties while employed there relate to industrial engineering. The letter describes the beneficiary’s sales and marketing duties in general terms that do not relate those duties to specific tasks involving industrial engineering so as to demonstrate that the beneficiary would have had to apply baccalaureate-level knowledge in industrial engineering. As a sales and marketing manager the beneficiary is described as involved in “industrial management of products and engineering productions and engineering production coordination with marketing and sales of the industrial products.” What “industrial management of products and engineering production” entails is not clear, especially because Menofesa does not produce products or equipment.

As a general manager with Menofesa, the beneficiary’s responsibilities involve “dosing, development, and implementation of foundry systems, process supply and installation of equipments and supply of pure metals, alloys and general products for the foundry process,” and “expansion of the entire operation of engineering product development[,] coordinating design, [and] development of products and equipment.” The duties to develop and implement a foundry system, expand the operation of engineering product development, coordinate design, and develop products and equipment are incongruous with Menofesa’s stated business activities of sales, distribution, installation, and technical support of equipment and products for clients. Menofesa does not describe what dosing involves or how it relates to industrial engineering.

The evidence in the record shows that while employed by Menofesa the beneficiary was primarily engaged in sales activities. One of the beneficiary’s letters to a prospective client explains, after visiting the client’s plant, the advantages of a product; another describes a product supplied to a client for several years. Other letters describe a conference given by Menofesa about the use of crucibles, a sales quotation for a furnace, and a proposal relating to the sale of equipment. The beneficiary also wrote memoranda about the industry, competitors, and demand for products; customer service; and a furnace. The beneficiary’s letters and memoranda relate to marketing and sales activities and are only tangentially related to industrial engineering.

The submitted evidence of guides, handbooks, and other documents relating to metals and alloys and other products shows the knowledge that the beneficiary must have to sell products and equipment. The evidence only tangentially relates to industrial engineering as this occupation is described in the *Handbook* and set forth above in this decision.

The 21 certificates received by the beneficiary show that he received training in various products, equipment, and systems, but no evidence in the record amplifies on the length of training received or the information conveyed in the seminars and courses.

The record reflects that the beneficiary has recognition of expertise in the specialty from [REDACTED] and Mr. [REDACTED] and that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Nevertheless, the AAO's conclusion, from the various pieces of evidence to which it has referred, is that the beneficiary's training and work experience are not equivalent to a baccalaureate degree in industrial engineering, which is required for the proposed position.

For these reasons, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. 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.