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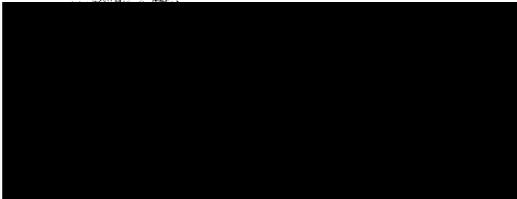
FEB 08 2015

FILE: WAC 04 030 51847 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 an importer and wholesaler of automobile body and engine parts, accessories, and lamps. 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 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 completing the mechanical design and development of special custom parts and other factory automobile components; establishing the design process through a survey of customer requirements and market demand, and by meeting with product and tooling design staff; designing, directing, and coordinating fabricating, installing, operating, and repairing custom-made automobile parts and accessory machinery; suggesting and designing new products and coordinating development efforts with other departments; supervising department employees and training new employees. The petitioner stated that the beneficiary is qualified for the proffered position because his combined educational background and experience is equivalent to a bachelor's degree in mechanical engineering from an accredited university in the United States.

The director determined that the proffered position was not a specialty occupation. The director referred to the description of an engineering technician in the Department of Labor's (DOL) *Occupational Outlook Handbook's* (the *Handbook*) to state that most of the beneficiary's time involves performing engineering technician duties and supervising a technician, and that the *Handbook* reports that an engineering technician does not require a baccalaureate degree in mechanical engineering. The director claimed that even though the beneficiary may be academically qualified in a field that may lead to professional classification, eligibility for such classification is available only if the proffered position is a specialty occupation based on its duties.

On appeal, counsel states that the director based his decision on the wrong occupation because the petitioner seeks to employ the beneficiary as a mechanical engineer, not an electrical engineer, and contends that this mistake impacts the director's grounds for denial. Counsel states that the director's decision did not specifically identify the petition's deficiencies such as which job duty is not at the level of an engineer, and what constitutes a "significant amount of time" spent performing a duty. According to counsel, the director did not provide an authority to substantiate the determination that each of the proffered position's duties must require the attainment of a baccalaureate degree, and counsel states that the job duties as a whole must be analyzed, not each of its individual duties. Counsel states that the description of a mechanical engineer in the *Handbook's* is similar to the proffered position, whereas a mechanical engineering technician is not.

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO does not simply rely on a position's title when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors that the AAO considers. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel claims that the beneficiary would occupy a mechanical engineer position which the *Handbook* describes as researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices.

The submitted evidence does not indicate that the beneficiary will perform the duties of a mechanical engineer as described in the *Handbook*. The Form I-129 petition shows that the petitioner is an importer and wholesaler of automobile body and engine parts, accessories, and lamps. The 2002 California Corporation Franchise or Income Tax Return, Form 100, reveals that the petitioner engages in the wholesale of auto parts; it does not state that the petitioner develops, designs, or manufactures such parts. The document entitled "Quality Replacement Automotive Body Parts" shows that the petitioner supplies automotive parts for many types of vehicles. This document does not indicate, in any manner, that the petitioner designs or fabricates automotive parts. The petitioner's lease agreement indicated that the permitted use of the leased warehouse and office building is for "warehouse and distribution of automobile components only." The lease does not permit designing and fabricating automotive parts. Nor would it permit the "fabrication, installation, operation, and repair of custom-made auto part accessory machinery," as described in the petitioner's job description. Thus, the evidence in the record does not support the petitioner's claim that it requires the services of a mechanical engineer.

The AAO observes that the petitioner claims that the beneficiary will "coordinate development efforts with other departments" and "direct and coordinate activities involved in fabrication, installation, operation, and repair of custom-made auto part accessory machinery." Yet, the petitioner's organizational chart showed only purchasing, sales, accounting, and warehouse departments; the research and development department has only one employee who is designated as "technical support" and another who is shown as performing "marketing and research." Thus, the beneficiary will not have other departments to "coordinate development efforts with."

Given the nature of the petitioner's business operation, it is unlikely that it would require the services of a mechanical engineer who will, as described in the petitioner's job description, provide "mechanical design and development of special custom parts and other factor auto components" and will "[s]uggest and design new products," and "[d]esign, direct[,] and coordinate activities involved in fabrication, installation, operation, and repair of custom-made auto part accessory machinery." These duties are associated with companies engaged in research and development or manufacturing, or both. Accordingly, based on the

evidence in the record, the petitioner fails to establish that the beneficiary would occupy a mechanical engineer job.

The AAO notes that counsel's December 4, 2003 letter described in detail the duties of the proffered position. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, counsel's assertions carry little or no evidentiary weight in this proceeding.

The AAO notes that the petitioner referred to information in the *Dictionary of Occupational Titles (DOT)* to state that the proffered position resembles that of a mechanical engineer. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is analogous to a mechanical engineer because of information in the *DOT*.

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted no evidence that would show 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." Accordingly, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, based on the evidence in the record, the petitioner fails to establish that the beneficiary would occupy a mechanical engineer job, a position that requires a baccalaureate degree in a specific specialty.

Because this is a newly created position, the petitioner does not have a past practice of normally requiring a degree or its equivalent for the position. Thus, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. Once again, based on the evidence in the record, the petitioner fails to establish that the beneficiary would actually occupy a mechanical engineer job, an occupation that requires 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 director erroneously stated that the petitioner sought the services of an electrical engineer. The AAO notes that it has authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. *Helvering v. Gowran*, 302 U.S. 238 (1937); *Securities Com'n v. Chenery Corp.*, 318 U.S. 86 (1943); and *Chae-Sik Lee v. Kennedy*, 294 F. 2d (D.C. Cir. 1961), *cert. denied*, 368 U.S. 926.

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.