U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 01 2005

IN RE: Petitioner: [redacted]
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: Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a jewelry manufacturer. It seeks to employ the beneficiary as a mechanical engineer and to classify him 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 record did not establish that the proffered position is a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

As provided in 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 evidence (RFE); (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a manufacturer and wholesaler of jewelry, established in 1991, with three employees and gross annual income of $820,000 in 2002. The petitioner stated that it wished to hire the beneficiary as a mechanical engineer to oversee the design and start-up of a new manufacturing division. The beneficiary is qualified for the position, the petitioner declared, by virtue of the five-year engineering degree he earned in 1998 from the State Engineering University of the Republic of Armenia. According to an education evaluation service located in Los Alamitos, California, the beneficiary's degree is equivalent to a master of science in mechanical engineering from an accredited U.S. college or university.

In its response to the RFE the petitioner listed the duties of the proffered position as follows:

- Plan and direct fabrication of test control apparatus and equipment.
- Develop methods and procedures for testing systems.
- Conduct feasibility studies, determine manufacturing process, choose and purchase machinery, equipment, and dies.
- Inspect machines and other equipment, repair or replace defective parts using hand tools and power tools.
- Repair, test, and install mechanical units.
- Disassemble machinery or units and clean parts with chemical solution.
- Inspect parts for wear or damage.
- Remove foreign particles from machinery, using compressed air blower.
- Repair, replace, or adjust components such as springs, bolts, relays, and air hoses.
- Test magnetic, hydraulic, and pneumatic control valves in mechanical units.
- Direct and coordinate fabrication and installation activities to ensure systems conform to engineering design and customer specification.
- Plan, lay out, modify, test, and maintain mechanical units and equipment, using precision instruments, hand tools, and power tools.
- Diagnose mechanical equipment malfunctions, service and repair equipment as required.
- Design products and systems, such as instruments, controls, machines, and mechanical and hydraulic systems, applying knowledge of engineering principles.
- Coordinate operation, maintenance, and repair activities for optimum utilization of machines and equipment.
- Confer with staff to determine layout of equipment, resolve problems of machine design, and avoid problems in manufacturing division.
- Assemble and install mechanical units, equipment, and systems using hand tools and electrical testing instruments.
- Operate equipment through trial run to verify setup, adjust controls and setup of mechanical units.
- Repair and service equipment following preventive maintenance schedule.
- Modify previously installed equipment to ensure compatibility with new mechanical units, or install safety devices or attachments to old equipment.
- Study drawings and sketches of proposed product and confer with staff to plan design details and model operation.
- Lay out reference points and dimensions on assorted materials, and observe operation of installation for conformance with operational standards.

- Determine machines, tooling, and sequence of operation necessary to produce model parts, utilizing knowledge of machining and fabricating techniques.
- Wire and solder electrical and electronic connections and components.
- Prepare drawings and specific types of equipment and materials to be used in equipment installation.
- Inspect completed installations for conformance with design and equipment specifications and safety standards.
- Maintain mechanical engineering log and bell book.

The petitioner declared that the beneficiary would also be responsible for designing systems to interface machines, hardware, and software, evaluate field installations, and recommend design modifications to eliminate malfunctions.

In his decision the director found that the duties of the proffered position reflected the duties of an engineering technician, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook* (*Handbook*). The director cited information in the *Handbook* that a baccalaureate level of educational training in engineering is not a normal, industry-wide minimum requirement for entry into the occupation, and concluded that the proffered position does not meet any of the qualifying criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the director erred in categorizing the proffered position as that of an engineering technician, instead of a mechanical engineer. An engineering technician is an assistant's position, the petitioner contends, which the proffered position is not because the beneficiary would be assisted by other employees. According to the petitioner the proffered position accords with the DOL *Handbook*'s description of a mechanical engineer, which requires a baccalaureate or higher degree in engineering and therefore qualifies as a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. *See Shanti v. Reno, Inc.*, *id.*, at 1165-66.

The occupation of mechanical engineering is described in the *Handbook*, 2004-05 edition, at 137-38, as follows:

> Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also develop power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production

> equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work . . . .
>
> Mechanical engineers work in many industries, and their work varies by industry and function. Some specialize in energy systems; applied mechanics; automotive design; manufacturing; materials; plant engineering and maintenance; pressure vessels and piping; and heating, refrigeration, and air-conditioning systems. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

Based on the evidence of record, the AAO determines that the proffered position does not fit the *Handbook*'s description of a mechanical engineer. Though the petitioner asserts that the beneficiary would be working as a mechanical engineer because he would be assisted by other employees, rather than providing assistance, no evidence has been submitted as to who among the petitioner's three employees would be providing assistance and what sort of assistance that would involve. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). There is no evidence in the record about the petitioner's manufacturing facility or the types of machinery used to manufacture jewelry. The list of job duties refers in general terms to "machinery" and "equipment" and "mechanical units" that the beneficiary will assemble and install. But no details have been provided about the petitioner's expansion plans, the types and quantity of jewelry to be produced, or the machinery and equipment involved.

Limited information about jewelry manufacturing can be found in an excerpt from the *Handbook*'s occupational entry for jewelers:

> Jewelers and precious stone and metal workers use a variety of common and specialized handtools and equipment to design and manufacture new pieces of jewelry; cut, set, and polish gem stones; and repair or adjust rings, necklaces, bracelets, earrings, and other jewelry . . . .
>
> In larger manufacturing businesses . . . *[m]old and model makers* create models or tools for the jewelry that is to be produced. *Assemblers* solder or fuse jewelry and their parts .... *Engravers* etch designs into the metal using specialized tools, and *polishers* bring a finished luster to the final product . . . .
>
> New technology is helping to produce jewelry of higher quality at a reduced cost and in a shorter amount of time. For example, lasers are often used for cutting and improving the quality of stones, for applying intricate engraving or design work, and for inscribing personal messages or identification on jewelry . . . .
>
> Some manufacturing firms use computer-aided design and manufacturing (CAD/CAM) to facilitate product design and automate some steps in the mold- and modelmaking process . . . .

Handbook, *id.*, at 606.

For the reasons discussed above, the AAO agrees with the director that the petitioner has not established that the beneficiary would be performing the duties of a mechanical engineer. The AAO is not persuaded that the duties of the proffered position exceed those of an engineering technician, whose "work is more limited in scope and more practically oriented than that of . . . engineers" (*Handbook*, *id.*, at 143). As indicated in the *Handbook* (*id.* at 144) and discussed by the director in his decision, a baccalaureate degree in engineering is not the normal minimum requirement for entry into an engineering technician position. While the petitioner claims that a baccalaureate degree in mechanical engineering is required for the proffered position, the petitioner must establish that its degree requirement is compelled by the performance demands of the position. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). In this case the evidence fails to demonstrate that the performance demands of the proffered position compel the petitioner to require a degree in mechanical engineering. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), the petitioner has submitted four letters from other jewelry manufacturers. Only one of the manufacturers states that it currently employs a mechanical engineer, though it provides no information about the duties that individual performs or the scale of its business operations. The other three letters state that an applicant for a mechanical engineering position must have a degree in that field, but do not indicate that any of their respective jewelry businesses currently employs a mechanical engineer or what duties such an employee performs. Furthermore, none of the letters specifies the factual foundation upon which the authors based their conclusions. Thus, the industry letters are not persuasive evidence that jewelry manufacturers similar to the petitioner in their scale of operations typically employ a mechanical engineer with the requisite baccalaureate or higher degree in the field. The record does not establish that such a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a mechanical engineering or a related specialty, as required to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in mechanical engineering or a related specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in mechanical engineering or a related specialty.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will

be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.