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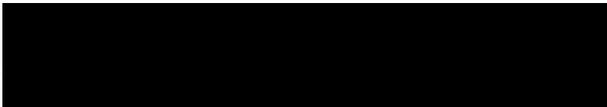
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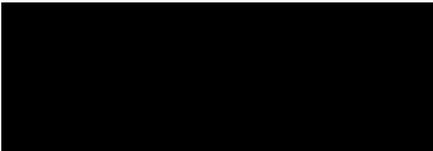
Petitioner:



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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*for Michael T. Kelly*  
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 sustained. The petition will be approved.

The petitioner is a producer and wholesale distributor of pre-packaged frozen food. It seeks to employ the beneficiary as a process 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 failed to establish that the proffered position qualifies as 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.

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 to the RFE; (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 from its president the petitioner described itself as a producer and wholesaler of pre-packaged frozen food – in particular its signature product, a Philippine-style egg roll called lumpia – to largescale food retailers. The petitioner stated that it had twenty employees, gross annual income of close to \$1 million in 2002, a 30% growth in business during 2003, and expectations of continued rapid growth. To streamline production and increase productivity the petitioner indicated that it plans to construct a larger factory, install new machinery, and hire a process engineer with the following duties:

- Oversee installation, operation, maintenance, and modification of facilities, equipment, and physical needs of the plant operation.
- Design and adapt special production machinery.
- Oversee manufacturing processes to reduce controlling costs, facilitate production at maximum efficiency and safety at minimum cost.
- Initiate and recommend process changes.
- Provide technical support in all aspects of production process.
- Develop expense and capital budget for maintenance operations.
- Develop advanced process technology.
- Manage, plan, stage, and implement projects to improve plant efficiencies and safety.
- Monitor machinery and operating procedures to maintain a safe work environment.
- Ensure compliance with plant policies, USDA and GMPS.
- Manage, analyze and validate critical process parameters to ensure product quality and aseptic integrity.
- Create and implement distribution systems to increase distribution.

According to the petitioner the proffered position requires a bachelor of science degree in mechanical or industrial engineering and familiarity with processed food production and distribution systems. The beneficiary has these qualifications, the petitioner indicates, based on his bachelor of science degree in mechanical engineering from ██████████ University in the Philippines, granted in April 1981, and nearly ten years of work experience in the large-scale food processing industry.

In response to the RFE the petitioner provided more details about its business operations and the duties of the proffered position. The petitioner stated that it was investing \$525,000 in new machinery for its production facility (a copy of the floor plan was submitted) to facilitate the shift from manual to mechanized operations. The process engineer, the petitioner explained, is a newly-created position to oversee the installation, operation, maintenance, and modification of the production facilities. An organizational chart incorporating the petitioner's anticipated expansion shows the proposed process engineer as directly subordinate to the president and directly superior to three employees – the production supervisor (who oversees the production crew of 15-20 employees), the quality control supervisor, and the plant & machinery maintenance technician. Additional documentation submitted in response to the RFE included a variety of business records and tax documentation.

In his decision the director found that the proffered position appeared to be that of an engineering technician, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, which does not require a baccalaureate degree as an industry-wide minimum requirement for entry into the occupation. In the director's view the petitioner did not demonstrate sufficient

organizational complexity or operational scale to warrant a process engineer. An expert letter from a university professor declaring that the proffered position required a mechanical engineering degree was not persuasive, the director stated, and an internet job announcement for a process engineer with an engineering degree involved a food conglomerate that was not comparable to the petitioner's in its scale of operation. The director concluded that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated 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 an engineering technician. The complexity of the duties and the supervisory responsibilities of the proffered position distinguish it from an engineering technician, who would typically be an assistant to an engineer. The petitioner reiterates its contention that the position is that of a process engineer, which is similar to an industrial engineer, as described in the DOL *Handbook*. The petitioner quotes from the *Handbook's* description of that occupation, which reads in pertinent part 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 . . . .

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 . . . .

*Handbook*, 2004-05 edition, at 135-36. The petitioner also submits a publication of Purdue University entitled "food process engineer," which is directly applicable to the proffered position. The publication describes that occupation as follows:

Food process engineers (FPEs) research and develop new and existing products and processes. They also design processing, handling, and packaging equipment. When they are hired as project engineers, they supervise the design, construction, installation, and start-up of processes. As plant engineers they keep factories running smoothly. Some FPEs manage or supervise other workers, work in technical sales and service, act as special consultants, and market products.

The petitioner asserts that the duties of the proffered position accord with those of an industrial or food process engineer in the foregoing descriptions. A process engineer is particularly needed when a company is expanding or streamlining its production, the petitioner explains, requiring the integration of new products and machinery into its production line. The petitioner concludes that the complexity of the duties and the supervisory responsibilities of the proffered position require an individual with a bachelor's degree in engineering.

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, Inc. v. Reno, id.*, at 1165-66.

The AAO determines that the duties of the proffered position in this case accord with the *Handbook's* description of an industrial engineer, *supra*, as well as with Purdue University's description of a food process engineer, *supra*. Based on the entire record, including the extensive documentation of the petitioner's business operations and the nature of the proffered position's duties, the AAO is persuaded that the beneficiary will be performing the services of an industrial/food process engineer. The *Handbook* states that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. See *id.* at 126. The AAO concludes that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

- (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.

As previously noted, the beneficiary earned a bachelor of science degree in mechanical engineering from De La Salle University in the Philippines in April 1981. The record includes a letter from an educational credentials evaluation service in Miami Beach, Florida, stating that the beneficiary's degree is equivalent to a bachelor of science in mechanical engineering from a regionally accredited college or university in the United States. The AAO determines that the subject degree is in a specific specialty directly related to the proffered position and that the beneficiary is therefore qualified, under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), to perform the services of the specialty occupation.

Thus, the record establishes that the proffered position is a specialty occupation and that the beneficiary is qualified to perform the services of that occupation.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the AAO will sustain the appeal and approve the petition.

**ORDER:** The appeal is sustained. The petition is approved.