

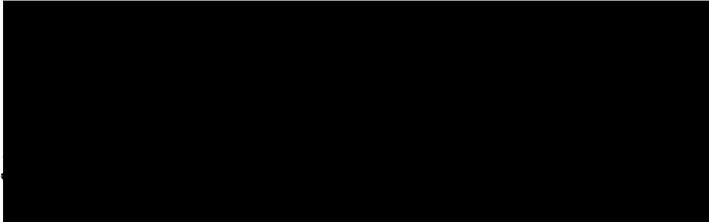
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20 Mass. Ave. N.W., Rm. A3042
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U.S. Citizenship
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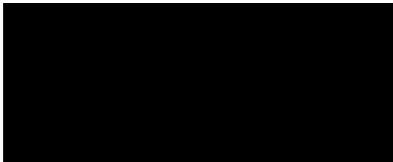
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FILE: WAC 04 041 50751 Office: CALIFORNIA SERVICE CENTER Date: MAR 03 2005

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 a firm engaged in the packaging and wholesale distribution of paper. In order to employ the beneficiary as a mechanical engineer, the petitioner 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 basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. In part, the director determined that the duties are those of an engineering technician, an occupation for which the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* does not report the requirement for a specialty degree.

On appeal, counsel asserts that the director erred by not identifying the proffered position with the mechanical engineer occupation described in the *Handbook*. Counsel provides copies of the section on engineers in the 2002-2003 edition of the *Handbook*, the section on mechanical engineers from the January 2004 *Handbook* Internet site, and the January 2004 version of the DOL's *Occupational Information Network (O*NET)* information on mechanical engineers. Counsel also provides an additional copy of a previously submitted letter from the director of international affairs of the American Society of Mechanical Engineers (ASME), which, in pertinent part, opined that the proffered position requires a bachelor's degree in mechanical engineering (BME). Counsel further submits copies of five job vacancy advertisements for mechanical engineers as evidence that employers have required engineering degrees for positions similar to the one proffered here. Counsel also contends that a requirement for a bachelor's degree in engineering "is common to the industry in parallel positions among similar organizations," and that "the nature of the specific duties to be performed by the individual is usually associated with the attainment of a baccalaureate or higher degree."

The director's decision to deny the petition was correct. The AAO bases this determination upon its consideration of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B (with its annotations by counsel) and counsel's brief with its attached documents.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In the job description attached to the petitioner’s letter of support the proposed duties are described in general terms that convey no details about the specific duties or the nature and level of knowledge required to perform them:

Directs and coordinates activities involved in [the] operation, application, installation, and repair of specialized cutting equipment and other machinery, including, but not limited to, POLAR System 2 high-speed cutters. Researches and analyzes various data associated with specialized cutting equipment such as specifications and manuals to determine [the] feasibility of design or application. Coordinates operation, maintenance and repair activities to maintain optimum utilization of cutting equipment. May design mechanical and hydraulic systems to interface machines, hardware, and software applying knowledge of engineering principles. Recommends design modifications to eliminate machine or system malfunctions.

Like the quotation above, the following information derived from the petitioner's letter of reply to the RFE illustrates the generalized superficial level of the information that the petitioner provided about the position and its duties. The beneficiary would be responsible for the smooth functioning of all the petitioner's machinery and for the installation and integration of "new technically complex machinery." During normal production cycles when he would not be concentrating on the installation of new equipment, the beneficiary would dedicate "up to 30% of his time" to machinery maintenance, including direction and coordination of repair activities and the supervision of "up to 2 people" in such activities. The beneficiary would dedicate "[a]pproximately 40%" of his time to "the production (operation) activities," which would include supervision of "up to 6 people," analysis of the reasons for inadequate performance of machinery, and such tests, including time-motion studies, as may be necessary. "Approximately 20%" of the beneficiary's time would be dedicated to "analyzing and researching various technical data associated with the machinery," including determinations on the purchase of new machinery and upgrading and design modifications on the petitioner's current machinery. The holder of the position would spend "the remaining 10%" of his time on "various miscellaneous issues" related to the aforementioned duties, such as possibly designing "mechanical and hydraulic systems to interface with the machinery applying his knowledge of engineering principles."

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

As the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, it consulted the current, 2004-2005 edition for the occupation most closely related to the proffered position.

The generalized extent to which the petitioner described the proffered position cannot establish a normal entry-level requirement of a bachelor's degree in any engineering discipline or in any other specific specialty. The petitioner's assertions that the job would require the analysis of technical data, the application of engineering principles, and, possibly, the design of mechanical and hydraulic systems are not persuasive. The evidence of record does not provide meaningful information about the actual duties that the beneficiary will be performing. While the duties of a mechanical engineer would generally qualify as a specialty occupation, the petitioner must do more than cite job duties from the *Handbook* or the *O*NET*. It must convey enough factual information for CIS to analyze whether the duties of the position require the theoretical and practical application of highly specialized knowledge. Accordingly, the petitioner has not established that the position substantially comports

with mechanical engineering or any other occupation for which the *Handbook* reports a requirement for at least a baccalaureate degree in a specific specialty.

Based on the information provided by the petitioner, the proffered position most closely resembles a supervisory position in the industrial machinery mechanic occupation, as described at pages 556-558 of the 2004-2005 edition of the *Handbook*. The *Handbook* indicates that this is a highly skilled type of position, but not one that requires a degree or its equivalent in a specific specialty.

The *O*NET* excerpt establishes only that the petitioner has used some generalized terms to describe its position that are substantially the same as some of the terms that the *O*NET* uses to generally describe the mechanical engineer occupation. This is not probative. The petitioner must do more than cite general job duties; it must relate how those duties are to be executed in the context of its business operations. The *O*NET* 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 *O*NET* is not designed to assess the specialty occupation status of either occupations or particular positions within them. Rather, the *O*NET* and its Job Zone and SVP ratings are meant to indicate only the total number of years of vocational preparation required for a particular occupation. They do not describe how those years are to be divided among training, formal education, and experience, and they do not specify the particular type of degree, if any, that a position would require.

The letter from the ASME director of international affairs has little probative value. Neither it nor any other evidence of record establishes that the author (1) has the specialized knowledge or experience to merit recognition as an expert on the educational requirements of the proffered position, and (2) had sufficient knowledge about the specific position in question to make a reliable judgment about its requirements. Furthermore, the letter does not present a sufficient factual basis for its conclusion. The letter indicates that the author rendered his opinion on the basis of the generalized job descriptions:

The description of the design development and analysis of the position requires an academic coursework typically taken in the third and fourth years of a four-year degree program. This material would not typically be covered during a two-year engineering technician's academic program.

The record's engineer job vacancy advertisements are irrelevant. As described in the advertisements, these other positions appear to be materially different from and substantially more demanding than the position here in question.

As the evidence of record does not establish that the proffered position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that its position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty. Also, the record does not include any submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in engineering or any other specific specialty. The letter from the international director of the ASME has little probative value. Finally, the job vacancy announcements submitted into the record have no persuasive value. The advertised positions are irrelevant because of the material difference between their duties and those described for the proffered position. They are irrelevant to the instant criterion also because they involve jobs outside the petitioner's industry.

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides for an employer's showing that its particular position is so complex or unique that it can be performed only by an individual with a specialty degree. As discussed earlier in this decision, the evidence of record does not establish the proffered position as either different from or more complex than usual industrial machinery mechanic supervisory positions, for which the *Handbook* indicates the need for an apprenticeship but not a specialized degree.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not an issue in this proceeding, as the petitioner has not attempted to establish a history of normally requiring at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record does not substantiate counsel's assertion that the duties are specialized and complex. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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