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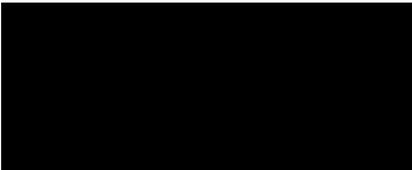
MAR 21 2005

FILE: WAC 03 135 54671 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 a sewing factory that 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 beneficiary is not qualified to perform the duties of the proffered position. 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 planning, coordinating, and integrating machinery and equipment in the production lines; researching and designing the production transportation equipment; drawing and coordinating the equipment's fabrication, operation, application, and installation; providing training instructions; designing systems to interface with machines; drawing the positioning and placement of machines and equipment to optimizing workspace; warehouse planning; coordinating maintenance and repair activities; and determining parts supply, maintenance tasks, safety procedures, and service schedules to maintain machines and equipment. The petitioner stated that a candidate for the proffered position must possess a baccalaureate degree in mechanical engineering.

Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director determined that the proffered position was a specialty occupation, an industrial production manager, requiring a baccalaureate degree in business administration, management, industrial technology, or engineering. Because the beneficiary holds the equivalent to a baccalaureate degree in mechanical engineering, the director found the beneficiary unqualified for the proffered position.

On appeal, counsel narrates the proffered position's duties and states that they are similar to a mechanical engineer as described in the *Handbook*.

Upon review of the record, the AAO disagrees with the director's implicit determination that the proffered position is a specialty occupation. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge,

and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In the October 7, 2003 letter, counsel asserts that the proffered position is a specialty occupation because of information in the *DOT*. 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 the *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 a specialty occupation simply because of information in the *DOT*.

Counsel states that the proffered position is parallel to a mechanical engineer. We disagree. 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. As discussed above, the AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The *Handbook* describes mechanical engineers as researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices.

The Form I-129 petition shows that the petitioner, a sewing factory, has 70 employees and a gross annual income of \$572,829. The petitioner asserted that the beneficiary will:

Research, plan[,] and design production transportation equipment. Provide drawing, direct[ing], and coordinat[ing] activities of fabrication, operation, application[,] and installation of above-mentioned equipment . . .

Yet, the petitioner furnished no evidence to support this assertion. 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). Given the evidence in the record, it is unlikely that a sewing factory would require the services of a mechanical engineer to design and fabricate equipment. Accordingly, the petitioner fails to establish that the beneficiary would occupy a mechanical engineer job.

The *Handbook* reveals that some of the beneficiary's duties, maintaining and repairing machinery and equipment, are performed by an industrial machinery mechanic, a highly skilled worker that maintains and repairs machinery in a plant or factory. The *Handbook* reports that industrial machinery mechanics often learn their trade through 4-year apprenticeship programs that combine classroom instruction with on-the-job-training. Thus, the occupation does not qualify as a specialty occupation because it does not require a baccalaureate degree.

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 the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The evidence in the record does not establish that the beneficiary will occupy a mechanical engineer job. Furthermore, some of the beneficiary's duties are performed by an industrial machinery mechanic, an occupation that the *Handbook* portrays as not requiring a baccalaureate degree.

There is no evidence to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): the employer normally requires a degree or its equivalent for the position.

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. And as shown by the *Handbook*, some of the beneficiary's duties are performed by an industrial machinery mechanic, an occupation that does not require a baccalaureate degree.

Because the proffered position is not a specialty occupation that requires a specific baccalaureate degree, the beneficiary is qualified for the proffered position.

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 AAO notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate.

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.