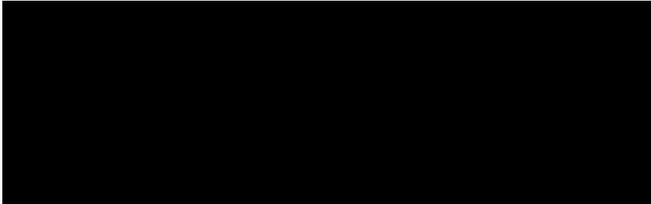


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Services

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DA

FILE: WAC 04 075 53421 Office: CALIFORNIA SERVICE CENTER Date: **NOV 10 2005**

IN RE: 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: 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

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 an importer, exporter, and wholesaler of fabrics. It seeks to employ the beneficiary as a project 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 proffered position does not qualify 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 and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a fabrics importer, exporter, and wholesaler, established in 1995, that receives garment-making contracts from U.S. customers and manufactures finished products at its three overseas factories located in China, which employ approximately 1,200 people. Federal and state tax and employee compensation documents in the record indicate that the petitioner had gross annual income of approximately \$11 million in 2002 and eleven salaried U.S. employees at the end of 2003. The petitioner proposes to hire the beneficiary as a project engineer. The duties of the position, and the percentage of time required by each duty, are listed by the petitioner as follows:

- 25%** Communicate with company salespersons and U.S. customers to confirm and clarify issues involved in garment contracts such as design, style, fabrics and accessories to be used, color, specifications, special requirements, etc.
- 20%** Translate English of the terms involved in prepared standard cards, graphs, or tables in the garment contracts into Chinese for engineers and technicians at overseas garment production bases with detailed contract requirement instructions and explanations such as number of threads per inch of the fabrics to be used, whether woven, warped or knitted, type of fibers such as wool, nylon, cotton, polyester, acrylic, or a blend, fabric weight, fastness of dye, color, tensile strength, shrinkage, absorbency, fire retardency, accessory types such as buttons, zippers, buckles, embroidery, bindings, webbing, laces, and threads, etc.
- 15%** Answer questions and solve problems of the engineers and technicians at the overseas production bases regarding project issues they encountered during the production.
- 10%** Review and bring the proto-sample garments made by and shipped from overseas production bases to U.S. customers for approval.
- 15%** Send U.S. customers' correction suggestions or approval to overseas garment production bases.
- 5%** Pay visits to U.S. customers' companies to exchange ideas, and may visit in person overseas production bases for facility inspection.
- 10%** Prepare project completion reports to the management department of the company.

A more detailed description of the foregoing duties, submitted by the petitioner in response to the RFE, appears in the service center's decision and is incorporated by reference into the AAO's decision. According to the petitioner, the proffered position requires a bachelor's degree in engineering with a concentration in garment-making. The beneficiary is qualified for the position, the petitioner contends, by virtue of his four-year bachelor's degree of engineering from China Textile University in July 1999, three years of experience as a fabrics tester at a garment company in Shanghai, and further experience as a project manager with one of the petitioner's manufacturing companies in China, where he began work in August 2002.

In his decision the director determined that the duties of the proffered position appeared to be those of a sales representative and a translator, as described in the Department of Labor (DOL)'s *Occupational*

Outlook Handbook (Handbook), not the duties of an engineer. The *Handbook* did not indicate that a bachelor's degree in a specific specialty was the normal, industry-wide minimum requirement for entry into a sales representative position, the director stated, and the record did not show that the duties the beneficiary would be performing exceeded the scope of a typical sales representative. Nor did the petitioner demonstrate that the translating duties of the position involved highly technical, complex, or specialized documents that required a bachelor's degree in a specific specialty. The record did not indicate that the petitioner normally requires a specialty degree for the proffered position, or that the position could not be performed by an experienced individual with less than a baccalaureate level of education. The director concluded that the proffered position does 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 reiterates that the duties of the position involve engineering functions that require an individual with an engineering degree, not a sales representative. For example, the beneficiary must decide "if the design and color of the contracted fashion really meet the trend of the market," and "if the materials and accessories to be used meet . . . standards including comfort, safety and other considerations such as durability, lightness, thermal insulation based on the chemical and physical properties of the target fabric materials," and "develop methods and procedures to test and verify chemical and physical contents of the fabric materials with instruments and devices," as well as provide professional advice in business negotiations and legal disputes involving the company's textile products and coordinate, if necessary, the procurement of alternative fabrics. A sales representative, the petitioner contends, could not perform such duties. Rather, the duties require an individual with a four-year bachelor's degree in engineering with a significant courseload of garment-related subjects.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, 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*, 764 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 agrees with the petitioner that the duties of the proffered position do not reflect those of a sales representative, as described in the *Handbook*. However, the AAO also agrees with the director that the duties of the proffered position do not reflect those of an engineer. The *Handbook* describes the engineering profession in the following, broadly-applicable language:

Engineers apply the theories and principles of science and mathematics to research and develop economical solutions to technical problems Engineers design products, machinery to build those products, plants in which those products are made, and the systems that ensure the quality of the products and the efficiency of the workforce and manufacturing process. They develop and implement improved ways to extract, process, and use raw materials They develop new materials that both improve the performance of products and take advantage of advances in technology They

analyze the impact of the products they develop or the systems they design on the environment and on the people using them

In addition to design and development, many engineers work in testing, production, or maintenance Some move into engineering management or into sales. In sales, an engineering background enables them to discuss technical aspects and assist in product planning, installation, and use

Most engineers specialize. More than 25 major specialties are recognized

Engineers in each branch have a base of knowledge and training that can be applied in many fields

Engineers use computers to produce and analyze designs; to simulate and test how a machine, structure, or system operates; and to generate specifications for parts Many engineers also use computers to monitor product quality and control process efficiency . . .

Handbook, 2004-05 edition, at 125-26. Based on the evidence of record, the AAO determines that the proffered position does not fit within the *Handbook's* broad description of an engineer. The duties of the proffered position, as described by the petitioner, do not demonstrate that the job involves the theoretical and practical application of a body of highly specialized knowledge in the field of engineering, such that a bachelor's degree in engineering or its equivalent would be required. The record does not establish that the garment-specific knowledge required to perform the duties of the job requires a degree in a specialty field. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are dispositive, not the title of the position. The petitioner must show that the duties of the position normally require a degree in a specialty. 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).

The AAO determines that the duties of the proffered position reflect those of an industrial production manager, as described in the *Handbook, id.*, at 51-52:

Industrial production managers coordinate the resources and activities required to produce millions of goods every year in the United States. Although their duties vary from plant to plant, industrial production managers share many of the same major responsibilities . . . includ[ing] production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments.

The primary mission of industrial production managers is planning the production schedule within budgetary limitations and time constraints They monitor the production run to make sure that it stays on schedule and correct any problems that may arise

Industrial production managers also must monitor product standards. Inspecting samples of finished goods and recording defects enables managers to statistically analyze quality control problems If the cause is substandard materials or parts from outside suppliers, companies may work with their suppliers to improve their quality.

. . . [M]anagers work closely with heads of other departments such as sales, procurement, and logistics to plan and implement company goals, policies, and procedures

Production managers usually report to the plant manager or the vice president for manufacturing

With regard to the educational requirements of industrial production managers, the *Handbook* states the following:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. However, a college education is required, even for those who have worked their way up through the ranks. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. Others have a master's degree in industrial management or business administration (MBA). Some are former production-line supervisors who have been promoted. Although many employers prefer candidates with a business or engineering background, some companies hire well-rounded liberal arts graduates

Some industrial production managers have worked their way up through the ranks, perhaps after having worked as first-line supervisors To be selected for promotion, however, they must obtain a college degree . . . and usually must take company-sponsored courses in management skills and communication techniques.

Id. at 52. While the foregoing excerpts indicate that employers routinely require industrial production managers to have a college degree, they do not indicate that a degree in a specific specialty is required. While many employers may prefer to hire individuals with degrees in business, engineering, or a related field, there is ample opportunity to enter the occupation with a degree in an unrelated field and/or industry work experience. The AAO concludes that 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), because a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into the position of an industrial production manager.

With regard to the second alternative criterion of a specialty occupation, there is no evidence in the record that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the evidence of record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner asserts that another individual ██████████ occupied the proffered position until January 2004. The record confirms that Ms. ██████ was an employee of the petitioner during 2003, though it does not indicate in what position. While the petitioner asserts that Ms. ██████ has a bachelor's degree from a U.S. college or university, there is no evidence of any such degree in the record, or any indication from the petitioner as to the academic field of the degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the petitioner's burden of proof. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the record does not establish that the petitioner normally requires a degree in a specific 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).

Finally, the record does not establish that the duties of the proffered position are so specialized and complex that they require knowledge at the level of a baccalaureate or higher degree in a specific specialty. The petitioner has not shown that the duties of the job could not be performed by an individual with experience in the textile industry and less than baccalaureate level knowledge in a specific specialty. Accordingly, the AAO concludes that the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. 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.