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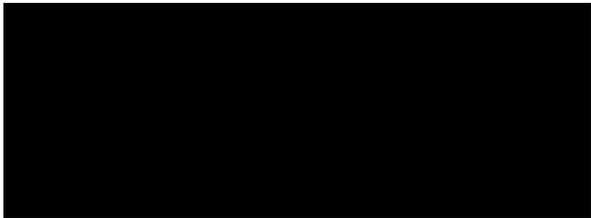
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FILE: WAC 03 116 50403 Office: CALIFORNIA SERVICE CENTER Date: NOV 15 2005

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

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 skilled nursing facility that seeks to employ the beneficiary as a maintenance 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 proffered position is not a specialty occupation. On appeal, counsel states that the proposed 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.

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 maintenance engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the petitioner's January 30, 2003 letter, the beneficiary would perform duties that entail maintaining the health care facility's equipment and systems; directing technical personnel in maintenance and determining methods, procedures, and conditions for maintaining equipment; directing activities to ensure that maintenance, installation, and testing confirm to specifications and code requirements; directing and coordinating the operation, maintenance, and repair of equipment and systems; using computer-assisted engineering and design software and equipment to perform engineering tasks; evaluating the system and recommending design modifications or changes in system requirements; devising and selecting the instrumentation and apparatus used to test mechanical, structural, or electrical equipment and translate test data in order to formulate engineering designs and evaluation decisions; and diagnosing the cause of electrical or mechanical malfunctions or the failure of operation equipment; and performing preventive and corrective maintenance. The petitioner's response to the director's request for evidence elaborated on the proposed duties. For the proposed position, the petitioner requires a baccalaureate degree in engineering.

The director stated that the proposed duties resemble those of industrial machinery, installation, repair, and maintenance workers as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that employers do not require a bachelor's degree for the positions. The director found the submitted evidence did not support the petitioner's claim that it normally requires a specific baccalaureate degree for the proposed position. The proposed duties and stated level of responsibility, the director stated, do not indicate complexity or authority that is beyond what is normally encountered in the occupational field. According to the director, in examining whether a position is a specialty occupation the duties to be performed are determinative and not the position's title. The director concluded that the evidence of record did not show that the job offered could not be performed by a person whose educational training fell short of a baccalaureate degree.

On appeal, counsel states that the proposed position differs from industrial machinery, installation, repair, and maintenance workers, and that the proposed position does not fit into a *Handbook* occupational classification. Counsel asserts that the proposed position involves "directing personnel and formulating engineering design and evaluation decisions," which are not the duties of an industrial machinery mechanic. According to counsel, the director failed to consider the supporting evidence, including the *Maintenance Engineering Handbook*, which points out that maintenance engineers are routinely found in all types of facilities, including hospitals.

Upon review of the record, 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.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The petitioner states that the beneficiary will direct employees engaged in electrical, mechanical, air conditioning, heating, plumbing, and carpentry activities; and will provide building, equipment, and ground maintenance. The AAO considers this to mean that the beneficiary will direct the activities of technicians such as heating, air-conditioning, and refrigeration mechanics and installers (HVACR technicians), and general maintenance and repair workers as those occupations are described in the *Handbook*.

The *Handbook* states that HVAC technicians install, maintain, and repair heating, ventilation, air-conditioning, and refrigeration systems; and the *Handbook's* Job Outlook section for this occupation states:

Renewed concern for energy conservation should continue to prompt the development of new energy-saving heating and air-conditioning systems. An emphasis on better energy management should lead to the replacement of older systems and the installation of newer, more efficient systems in existing homes and buildings. Also, demand for maintenance and service work should increase as businesses and homeowners strive to keep systems operating at peak efficiency. Regulations prohibiting the discharge of CFC and HCFC refrigerants took effect in 1993, and regulations banning CFC production became effective in 2000. Consequently, these regulations should continue to result in demand for technicians to replace many existing systems, or modify them to use new environmentally safe refrigerants.

The beneficiary's proposed duty to provide technical recommendations on improvements, which will result in improved safety conditions and efficiency, and to recommend modifications to the existing plant and equipment facilities are similar to the duties of HVAC technicians as described in the above *Handbook* passage as HVAC technicians replace older systems and install newer, more efficient systems in buildings,

and modify systems to use new environmentally safe refrigerants. The petitioner states that the beneficiary will “[prepare] rough layouts, plans and specifications, and cost estimates of proposed renovation and construction projects.” The *Handbook* reveals that a person studying to become an HVAC technician studies theory, design, and equipment construction, as well as electronics; and that for persons interested in entering this occupation, courses in shop math, mechanical drawing, applied physics and chemistry, electronics, blueprint reading, and computer applications provide a good background for the occupation.

General maintenance and repair workers, which are supervised by the beneficiary, are depicted in the *Handbook* as follows:

They repair and maintain machines, mechanical equipment, and buildings and work on plumbing, electrical, and air-conditioning and heating systems. They build partitions, make plaster or drywall repairs, and fix or paint roofs, windows, doors, floors, woodwork, and other parts of building structures. They also maintain and repair specialized equipment and machinery found in cafeterias, laundries, hospitals, stores, offices, and factories.

The *Handbook* reveals that first-line supervisors/managers that supervise and coordinate the activities of mechanics, installers, and repairers require work experience in a related occupation; the *Handbook* does not convey that supervisors or managers require a baccalaureate degree.

Counsel states that the *Maintenance Engineering Handbook* shows that maintenance engineers are routinely found in all types of facilities, including hospitals. The AAO finds that the submitted excerpt from the *Maintenance Engineering Handbook* does not discuss the duties or educational requirements of a maintenance engineer, however. This evidence is therefore not persuasive in demonstrating that the proposed position is similar to a maintenance engineer and that the proposed position requires a baccalaureate degree in engineering.

Although the submitted job posting from Global Search Network indicates that that company requires a baccalaureate degree in engineering, the AAO finds that a single job posting is not sufficient to establish an industry norm.

The AAO’s conclusion, from the evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

No evidence in the record establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier, the *Handbook* reveals that the proposed position parallels a

supervisor or manager of technicians, and that employers do not require a supervisor or manager to possess a baccalaureate degree. Accordingly, the petitioner fails to establish this criterion.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has conveyed that the proposed position resembles a supervisor or manager of technicians, and that employers do not require a supervisor or manager to possess a baccalaureate degree. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.