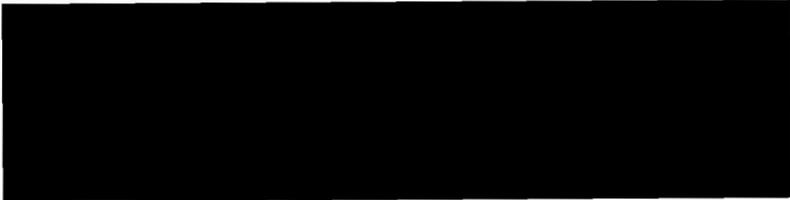




U.S. Citizenship
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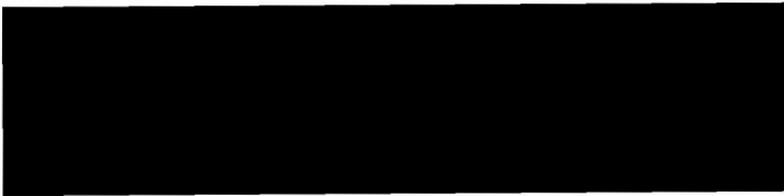
FILE: WAC 02 146 52290 Office: CALIFORNIA SERVICE CENTER Date: JUL 14 2006

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:



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.

For Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the Form I-129 nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. A motion to reconsider is now before the AAO. The motion will be granted. **The previous decision shall be affirmed. The petition will be denied.**

The petitioner is a structural steel fabricator, with 35 employees. It seeks to employ the beneficiary as an engineering technician 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 based on his determination that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; (4) the Form I-290B appeal filed on February 12, 2003; (5) the AAO dismissal of that appeal; and (6) counsel's motion to reconsider, submitted on June 21, 2004.

Counsel's motion contends that CIS' denial of the instant petition was not consistent with the facts and circumstances of the case or precedent decisions. He asserts that approval of the petitioner's Form I-129 is warranted based on the designation of the occupation of engineering technician as a professional level position by the Department of Labor's *Dictionary of Occupational Titles (DOT)*, which, based on the findings in *Matter of Shin*, 11 I&N Dec. 686 (BIA 1966), establishes the position's degree requirement. Counsel also points to the listings for engineering technician jobs submitted by the petitioner, all of which indicate a degree requirement, as proof that employers now prefer to hire engineering technicians with four-year degrees. Counsel further contends that the duties of the position require knowledge and use of principles and theories of science, engineering and mathematics that is gained through a degree in engineering and, therefore, that the position meets the requirements for a specialty occupation set forth in *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Accordingly, the AAO will limit its consideration of the record to these issues.

In its dismissal of the petitioner's appeal, the AAO found the proffered position of engineering technician was not an occupation that normally imposed a degree requirement on individuals seeking entry-level employment, as required to establish the proffered position under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As noted in its May 21, 2004 decision, the AAO relied for this determination on the discussion of the occupational title of engineering technicians found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the resource on which the AAO routinely relies for information on occupations and the preparation required to perform them. The *Handbook* offers an overview of national hiring practices, drawing on personal interviews with individuals employed in the occupation, websites, published training materials and interviews with the organizations granting degrees, certification or licenses in the field to reach its conclusions regarding U.S. employment practices.

As the Department of Labor has recently published a new edition of the *Handbook*, the AAO has again reviewed its discussion of engineering technicians for any changes to its description of the occupation or the type of preparation required to perform its duties. The *Handbook*, however, continues to report there is no degree requirement for employment as an engineering technician:

Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and in the Armed Forces.

Persons with college courses in science, engineering, and mathematics may qualify for some positions but may need additional specialized training and experience. Although employers usually do not require engineering technicians to be certified, such certification may provide jobseekers a competitive advantage.¹

Counsel's motion contends, however, that another Department of Labor publication, the *DOT*, which considers the occupation of engineering technician to be a professional level position, establishes the proffered position's degree requirement if viewed in light of the findings of *Matter of Shin*, 11 I&N Dec. 686 (BIA 1966). Counsel's reasoning is not persuasive.

Neither the *DOT* nor the *Occupational Information Network (O*Net)* which replaced it, is a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. Both 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 Specific Vocational Preparation (SVP) rating assigned by the *DOT* indicates only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. Moreover, in the instant case, the SVP rating assigned to the occupation of engineering technician by the *DOT* does not support counsel's statements regarding the degree requirements of the proffered position. It assigns an SVP rating of 7 to the occupation of engineering technician, indicating that the occupation may be performed by individuals who have "over 2 years [and] up to and including 4 years" of vocational preparation. Accordingly, the *DOT's* conclusions regarding the type of preparation required to perform the duties of the proffered position support those of the *Handbook*.

Counsel's reliance on *Matter of Shin* in this proceeding is also misplaced. The issue before the AAO is whether the evidence of record establishes the proffered position as a specialty occupation. The findings in *Matter of Shin*, however, are related to the Board of Immigration Appeal's (BIA) consideration of the qualifications of a beneficiary to perform the duties of a financial economist. Accordingly, they are not relevant to this proceeding.

The AAO now turns to the petitioner's submission of seven Internet listings for engineering technician jobs, which, counsel contends, are proof that employers prefer to hire degreed individuals. He asserts that a degree requirement for engineering technicians has evolved as a "matter of business necessity."

¹ *Occupational Outlook Handbook*, 2006-2007 Edition, at www.bls.gov/oco/ocos112.htm.

The AAO's dismissal of the petitioner's appeal has already discussed the reasons why the seven job listings in the record fail to establish the petitioner's degree requirement as the norm within its industry, as required to establish the proffered position as a specialty occupation under the first prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the degree requirement is common to the industry in parallel positions among similar organizations. The AAO affirms these previous findings and hereby incorporates the discussion of this evidence by reference.

Counsel's motion, however, indicates that the AAO should view these listings as evidence of an employer preference for hiring engineering technicians with four-year degrees. Although the *Handbook* does not indicate such an employer preference, the AAO notes counsel's assertions that many employers prefer to hire degreed individuals when filling engineering technician positions. Employer preference is not, however, synonymous with the normally required language of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Neither can it establish a degree as an industry-wide norm under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Employer preference indicates only that employers find degrees desirable. It is, therefore, insufficient to establish that a baccalaureate or its equivalent is "normally the minimum requirement for entry into the particular position" or that a "degree requirement is common to the industry."

As further proof that the proffered position imposes a degree requirement on the beneficiary, counsel cites the following language from *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988):

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required [are best typified by a degree granted by such institution] at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study, which relates directly to the position in question.

Based on the above reasoning, counsel contends that the proffered position of engineering technician qualifies as a specialty occupation because it requires knowledge and use of principles and theories of science, engineering and mathematics to solve problems in research and development, manufacturing, sales, construction, inspection and maintenance, theoretical and practical knowledge that is "best typified" by a degree in engineering. However, counsel's opinion as to the proffered position's degree requirement is not persuasive.

His description of the duties of an engineering technician paraphrases that provided by the *Handbook*, which reports that entry-level employment as an engineering technician may be obtained without the minimum of a baccalaureate degree. Further, the record contains no evidence that indicates that the performance of the proffered position's duties would require the beneficiary to have greater knowledge or skill than that normally possessed by engineering technicians. Accordingly, the AAO does not find the petitioner to have established, as held in *Matter of Michael Hertz*, that the proffered position requires knowledge that is best typified by a baccalaureate degree. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of*

Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

For the reasons previously discussed, the petitioner has not established that the AAO's decision was based on an incorrect application of law or policy. Accordingly, the AAO will affirm that decision.

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 decision of the AAO is affirmed. The petition is denied.