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U.S. Citizenship
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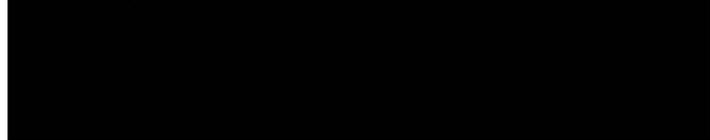
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FILE: WAC 03 191 50654 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2006

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.

Robert P. Wiemann
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer of activated carbon that seeks 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 because the proffered position is not a specialty occupation. 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 I-129 petition; the petitioner's June 10, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: being in charge of the two horizontal furnaces of regenerated spent carbon; adjusting the activation process to ensure that pores of the required size for a particular application are developed; sending spent and virgin carbon samples to outside labs for analysis; separating batches depending on analysis; setting up furnace conditions for correct temperatures, air volumes and other conditions, including feed rate and discharge rate depending on the spent carbon; monitoring production reports to determine whether each shift is giving the correct production; carrying out lab analyses for the carbon coming out from the two furnaces for butane absorption, iodine absorption, nitrogen, surface area analysis, bulk density, pH, ash, volatile matters and size distribution; preparing maintenance schedule programs for both furnaces, including furnace activation tube, cracks, plate thickness, bearing replacement, all gear boxes, routing maintenance, regular check-ups for feed rate and discharge systems and bucket elevators, belt elevators, wet scrubber and furnace computer system; calculating monthly profitability by analyzing employee's wages, gas consumption, electricity bills, chemical usage, and maintenance costs; carrying out research and development using his previous experience to increase output from both furnaces to provide virgin and regenerated carbon and reduce unnecessary expenses; meeting with customers to check their satisfaction including an assessment of the quality of their regenerated carbon; attending to the maintenance of furnace and breakdowns; and designing production processes according to the different types of raw materials. The petitioner stated that a qualified candidate for the job would possess a bachelor's degree in engineering.

The director found that the proffered position was not a specialty occupation because the petitioner did not establish there is a bona fide position that meets the requirements of a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the duties of the proffered position are those described by the Department of Labor's *Occupational Outlook Handbook (Handbook)* for engineers. Counsel also states that the director misunderstood the nature of the petitioner's business, and therefore, came to an incorrect conclusion that a bona fide position may not exist. Counsel states that the petitioner has met at least one of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. On appeal, counsel provides additional information about the nature of the petitioner's business. The AAO does not concur with the director that the petitioner did not establish that a credible employment offer consistent with the needs of the petitioner's organization existed. The director's remarks on this issue are withdrawn.

The duties of the proffered position are those of a mechanical engineer. As described in the *Handbook*, "A bachelor's degree in engineering is required for almost all entry-level engineering jobs." The proffered position is, therefore, a specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.