

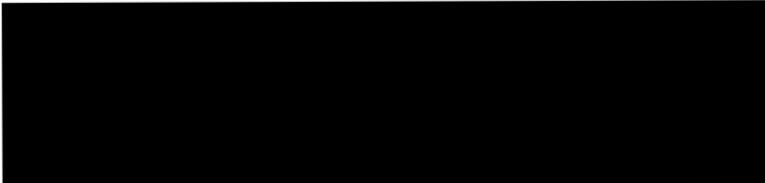


U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 193 50698 Office: VERMONT SERVICE CENTER Date: MAY 09 2006

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, Chief
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 jewelry design and manufacturing company that seeks to employ the beneficiary as an 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 finding that the proffered position is not a specialty occupation and the beneficiary is not qualified for a specialty occupation. Counsel submitted a timely appeal and brief.

The AAO will first consider the director's conclusion that the proffered position is not 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) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the request for evidence; (4) the director's denial letter; and (5) the Form I-290B and the appeal brief.

The petitioner is seeking the beneficiary's services as an 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 response to the request for evidence. According to the petitioner's June 2, 2004 letter, the beneficiary's duties are as follows: design an ultra-sound cutting machine for precious and semi-precious stones, develop plans and specifications for the machine, prepare models, and perform tests to determine the machine's performance. The petitioner's September 24, 2004 letter stated that the beneficiary would spend 15 months developing plans and specifications for the cutting machine (including performing research for the plans and specifications, solving problems in the plans and specifications, and consulting with outside engineers on issues), and would spend 21 months preparing the model and performing testing. The beneficiary is said to use computers to produce and analyze designs; to simulate and test how the machine, structure, or system works; to make engineering calculations; and to apply concepts of electronics. To design a proprietary product for the petitioner, the beneficiary is expected to use computers and apply electronics, design, mathematics, and engineering technology. The petitioner asserts that it requires an engineer for the proposed position.

In denying the petition, the director stated that the technology used in stone and diamond cutting is not proprietary and that the petitioner's business does not operate at a level that requires an engineer to develop a tool that may already exist in the marketplace. The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) confirms that an engineer is a specialty occupation. However, the director stated that the position offered here is not that of an engineer. The director found inconsistencies in the evidence relating to the number of the petitioner's employees and its gross annual income. The director concluded that the beneficiary is not qualified to perform the offered position.

On appeal, counsel states that the petitioner has employees and also hires contract labor. Counsel discusses the petitioner's tax records and asserts that the petitioner's 2003 federal income tax return shows gross receipts of \$6,508,811, and taxable income of \$1,065,676. Counsel states that the petitioner's business will use the stones cut by the ultra-sound machine. According to counsel, *Young China Daily vs. Chappell*, 742 F. Supp. 552, 554 (N.D. Cal. 1989) indicates that the duties of an engineer are unrelated to the size of an employer; thereupon, he contends that the director erroneously found the petitioner's enterprise as too small to justify the need for an engineer to develop an ultra-sound cutting machine. Counsel contends that the beneficiary will perform engineering duties and will work with consultants and experts from various disciplines. Whether or not the ultra-sound cutting machine is proprietary or has already been developed has no bearing on determining whether the offered position is a specialty occupation, counsel maintains. Counsel states that the petitioner's industry involves manufacturing jewelry and that the *Handbook* indicates engineers are employed in this industry.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

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 agrees with counsel's assertion that the proprietary or nonproprietary nature of the ultra-sound cutting machine and the size of the petitioner are irrelevant in determining whether the proposed position is a specialty occupation. Further, the AAO finds that counsel adequately addressed the director's concerns relating to the petitioner's financial status and the number of its employees.

Counsel states that the offered position is that of an engineer. The AAO routinely consults the *Handbook* regarding the duties and educational requirements of occupations. The 2006-2007 edition of the *Handbook* describes an engineer and the specialized fields of electrical, electronics, and mechanical engineers as follows:

Engineers consider many factors when developing a new product. For example, in developing an industrial robot, engineers precisely specify the functional requirements; design and test the robot's components; integrate the components to produce the final design; and evaluate the design's overall effectiveness, cost, reliability, and safety. This process applies to the development of many different products, such as chemicals, computers, gas turbines, helicopters, and toys.

Engineers use computers extensively 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. The field of nanotechnology, which involves the creation of high-performance materials and components by integrating atoms and molecules, also is introducing entirely new principles to the design process.

Electrical engineers design, develop, test, and supervise the manufacture of electrical equipment. Some of this equipment includes electric motors; machinery controls, lighting, and wiring in buildings; automobiles; aircraft; radar and navigation systems; and power-generating, -controlling, and transmission devices used by electric utilities. Although the terms "electrical" and "electronics" engineering often are used interchangeably in academia and industry, electrical engineers have traditionally focused on the generation and supply of power, whereas electronics engineers have worked on applications of electricity to control

systems or signal processing. Electrical engineers specialize in areas such as power systems engineering or electrical equipment manufacturing.

Electronics engineers, except computer, are responsible for a wide range of technologies, from portable music players to the global positioning system (GPS), which can continuously provide the location of a vehicle. Electronics engineers design, develop, test, and supervise the manufacture of electronic equipment such as broadcast and communications systems. Many electronics engineers also work in areas closely related to computers. However, engineers whose work is related exclusively to computer hardware are considered computer hardware engineers. Electronics engineers specialize in areas such as communications, signal processing, and control systems or have a specialty within one of these areas—industrial robot control systems or aviation electronics, for example.

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines, as well as power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

The *Handbook* confirms counsel's contention that engineers are employed in the manufacturing industry. The *Handbook* also conveys that a baccalaureate degree in engineering is required for almost all entry-level engineering jobs. However, it also conveys that many colleges provide 2- or 4-year degree programs. The *Handbook* states:

In addition to the standard engineering degree, many colleges offer 2- or 4-year degree programs in engineering technology. These programs, which usually include various hands-on laboratory classes that focus on current issues in the application of engineering principles, prepare students for practical design and production work, rather than for jobs that require more theoretical and scientific knowledge.

Although the petitioner identified its position as that of an engineer requiring a baccalaureate degree, the petitioner's delineation of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. A petitioner cannot establish its employment as a specialty occupation by describing the duties of the position in the same general terms as those used by the *Handbook* in discussing an occupational title, e.g., an engineer develops, and designs and tests products. The AAO observes that the petitioner's description of the beneficiary as using "computers to produce and analyze designs" and using

“computers to produce and analyze designs, to stimulate and test how the machine, structure, or system works” is quoted directly from the *Handbook’s* portrayal of an engineer. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation; however, a petitioner should not rely on such a generalized description when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities that the beneficiary will perform in relation to the context of its business operations. Here, the petitioner offers a generalized outline of the proposed duties, with some of the duties described verbatim from the *Handbook*. The petitioner submitted no evidence in the record relating to the computer hardware, software programs, materials, or equipment that will be used by the beneficiary in performing the proposed duties. Thus, the record contains no evidence that would assist in elucidating the proposed duties. The submitted financial documents do not provide any information concerning the proposed duties. The petitioner, therefore, fails to establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

CIS must examine the actual employment of an alien, which are the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. With the instant petition, the petitioner’s description of the duties of its position is so generic that it is not possible to identify the beneficiary’s tasks and, therefore, whether they relate to those of an engineer. Further, without a reliable description of the position’s duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation - - employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor’s or higher degree in the specific specialty, or its equivalent, as a minimum for entry into the occupation. In light of the generic job description offered here and the lack of evidence in the record, the AAO cannot conclude that the proposed position requires more than a 2-year degree in engineering technology. As such, the AAO finds that the petitioner has failed to establish that it has a specialty occupation for which it is seeking the beneficiary’s services. The petitioner, therefore, satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations; the proffered position is so complex or unique that it can be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or 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.

Since the AAO finds that the petitioner has not established that the proposed position requires a baccalaureate degree in a specific specialty, the beneficiary’s qualifications for the proposed position are inconsequential in this proceeding.

Accordingly, the AAO shall not disturb the director’s denial of the petition on the ground that the proposed position fails to qualify as 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 not sustained that burden.

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ORDER: The appeal is dismissed. The petition is denied.