

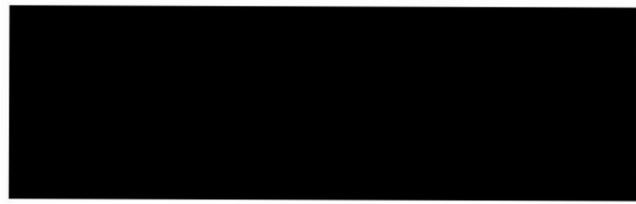
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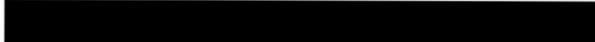
**U.S. Citizenship  
and Immigration  
Services**

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FILE: WAC 04 236 52395 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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 PETITION



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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision will be withdrawn. The petition will be remanded.

The petitioner is a laser optics manufacturer and wholesaler that seeks to employ the beneficiary as a film coating 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 reclassified the position from an electrical engineer to an electronics technician and denied the petition on the grounds that the proposed position was not as a specialty occupation. On appeal, counsel asserts that the director misclassified the position and that it is a specialty occupation. The AAO finds that the proposed position is a specialty occupation and withdraws the director's denial of the petition. The AAO finds the director erred in concluding that the position is that of an electronics technician, not an engineer. The AAO finds that the proposed position is that of a materials engineer and is a specialty occupation. The petition cannot be approved, however, because the documents the petitioner submitted fail to establish that the beneficiary is qualified to perform the duties of 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's

denial letter; and (5) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a film coating engineer. Evidence of the beneficiary's duties includes the company support letter attached to the Form I-129, the petitioner's response to the RFE, and counsel's brief on appeal. According to this evidence, the beneficiary's duties would include: designing and developing thin film coatings; operating and maintaining various vacuum deposition systems; performing trouble shooting on vacuum disposition systems; inspecting optics before and after each coating operation; and performing calibrations on coating materials, such as Zirconium oxides, Silicon oxide, Aluminum oxides, etc. The petitioner stated that a person who does not hold a minimum of a bachelor's degree in related engineering subjects or the equivalent experience could not perform the duties of the proposed position.

Upon a thorough review of the record, the AAO concludes that the petitioner has established that its proposed position is a specialty occupation pursuant to 8 C.F.R. §214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

An important factor CIS considers, to determine whether or not this criterion has been met, is whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires at least a bachelor's degree in a specific field of study. *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)). The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2006-'07 *Handbook* states that for an engineer, a bachelor's degree in engineering or a related field is required.

The AAO agrees with the petitioner that the director misclassified the position as an electronics technician. As the evidence establishes that the proposed duties are those of a materials engineer and the *Handbook* indicates that most entry-level engineering positions require bachelor's degrees in engineering, the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This part of the director's decision will be withdrawn.

The AAO now turns to the issue of whether or not the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), the AAO finds that the submitted documents do not establish that the beneficiary is qualified to perform the duties of a specialty occupation. The beneficiary does not possess a U.S. bachelor's degree. Nor does the beneficiary possess a bachelor's degree from a foreign university. The petitioner asserts that the beneficiary's formal education together with his work experience are the equivalent to a U.S. bachelor's degree in electronics engineering and that he is qualified to perform the duties of a specialty occupation. The petitioner submitted evaluations from Foundation for International Services, [REDACTED] of Seattle Pacific University, and the Global Education Group. The AAO accepts the portions of the evaluations that conclude that the beneficiary completed the equivalent of two years of undergraduate study in Electrical Engineering from Incheon City College in the Republic of Korea.

Pursuant to 8 C.F.R. §§214.2(h)(4)(iii)(I) and (3), the AAO does not accept the portion of the evaluations that would elevate the beneficiary's two years of university education to a bachelor's degree on the basis of the beneficiary's work experience. The evaluations of work experience are not by officials who have authority to grant college-level credit for training and/or experience, in the specialty, at an accredited college or university that has a program for granting such credit based on an individual's training and/or work experience. The

evaluations assert that the beneficiary's two years of study and 9 years of progressively responsible work experience in electronics engineering are the equivalent of a U.S. bachelor's degree in electronics engineering. A letter from the Vice President of Academic Affairs at Seattle Pacific University, accompanying [REDACTED] letter, states that Seattle Pacific University faculty have the authority to grant college level credit for training and experience, both in their areas and more generally in those foundational areas of university education commonly considered "general education," "distribution requirements," or "related instruction in communication, computation, or human relations." The letter indicates that the university considers professional credentials and work experience "for the purposes of admissions, advising, placement in degree programs, substitutions of courses, judgments on petitions, assessments of internships, and other routine university evaluations." The letter does not establish that the university has a program to grant college-level credit for training and/or experience in electronics engineering.<sup>1</sup> No independent evidence establishes that [REDACTED] of Global Education Group, is an official from an accredited institution that has a program for granting credit based on work experience or training.

CIS is authorized to make the determination of a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Based on the evidentiary record, the petitioner has not demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in engineering or a related field.

Finally, the record does not indicate that the beneficiary has the recognition of expertise in electrical engineering evidenced by, for example, recognition of expertise by at least two recognized authorities in the same specialty occupation, membership in a recognized foreign or U.S. association in the specialty occupation, or published material by the beneficiary in professional publications or major newspapers.

The record establishes that the proposed position is that of a materials engineer and is a specialty occupation. No evidence contained in the record, however, demonstrates that the beneficiary qualifies to perform the duties of the specialty occupation. As the director has not determined whether or not the beneficiary's education and work experience are the equivalent of a U.S. bachelor's degree in engineering, the director's decision will be withdrawn and the petition will be remanded to allow the director to rule on the issue. The director may afford the petitioner reasonable time to submit evidence pertinent to this issue and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the statutory and regulatory requirements for eligibility.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, shall be certified to the AAO for review.

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<sup>1</sup> Seattle Pacific University's website does not indicate that the university has a program for granting college-level credit for training and/or experience. <http://www.spu.edu>.