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**U.S. Citizenship  
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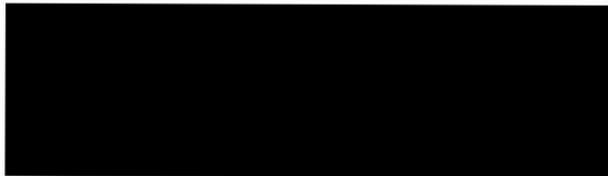
FILE: WAC 04 147 50116 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 2006**

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, 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 corporation engaged in the business of research and development of vitamins and minerals that seeks to employ the beneficiary as a mechanical 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. Counsel submits the petitioner's reasons for appeal on the Form I-290B, along with 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 attachments. 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 Form I-129; the attachments accompanying the Form I-129; the company support letter;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail maintaining, updating, and optimizing the company's current mechanical and electromechanical machines and equipment for better vitamin and mineral production (20% of time); coordinating and directing operation, maintenance and repair activities of those machines and equipment to obtain optimum machine operation (10% of time); and designing new machines and equipment for the company's future business lines in the fields of pharmaceuticals and medical devices, and developing testing methods and procedures (70% of time). The petitioner stated that it requires a candidate to have a degree in mechanical or electrical engineering for the proffered position.

In his decision, the director noted that the petitioner provided information from its web-site that stated it operated two facilities – an 11,000 square foot modern encapsulation facility near Portland, Oregon and a 25,000 square foot modern liquid fill facility near San Diego, California. The director noted that the petitioner submitted a copy of its lease which indicated that it had a facility with 8,004 square feet. Additionally, the director noted that the petition claimed on its petition that it is engaged in research and the manufacture of vitamins and minerals yet a copy of its web-page that was submitted by the petitioner indicates that it is involved in supplying all the packaging needs of the domestic and international natural food and supplement industry. The director found that this evidence failed to establish that any research takes place at the petitioner's facilities. The director also noted that although the petitioner claims \$3.5 million in gross annual income on the Form I-129, the evidence submitted in support of the petition, the petitioner's 2001 Federal income tax return, indicated \$2,648,259, or almost \$1 million less than claimed.

The director found that the duties of the proffered position described the duties of an engineering technician which is not considered a specialty occupation. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which indicates that although a baccalaureate level of training is increasingly preferred, it is not the normal, industry-wide minimum requirement for entry into the occupation. The director found that the submitted information did not indicate that the petitioner normally requires applicants for the position to possess baccalaureate or higher-level degrees in the field. The director determined that the proposed duties and stated level of responsibility do not indicate a complexity or authority that is beyond what is normally encountered in the occupational field. Therefore, the director concluded that the proffered position is not a specialty occupation.

On appeal, counsel asserts that a baccalaureate degree in mechanical engineering or the equivalent is necessary to successfully perform the duties of the proffered position. Counsel refers to the previously submitted duties of the proffered position and asserts that the proffered position primarily requires the theoretical and practical application of a body of highly specialized knowledge, and that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO notes that the petitioner did not address the director's concern regarding the discrepancy of almost \$1 million dollars between the gross annual income listed on the Form I-129 and the petitioner's federal income tax return. Additionally, the petitioner did not address the director's concern regarding the conflicting information about the size and type of facility that it operates. As noted by the director, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*.

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 prefaces its analysis by noting that the record lacks evidence of specific projects and specific tasks and an explanation from the petitioner indicating that such tasks would require the theoretical and practical application of a bachelor's degree level of highly specialized engineering knowledge. The descriptions of the proposed duties are exclusively generic and do not persuade the AAO that their actual job performance would require more than the level of knowledge usually associated with the duties of engineering technicians.

The AAO 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*, 812 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.

In the denial, the director stated that the duties of the proffered position are similar to those of an engineering technician. The director concluded that, at best, industry organizations and the petitioner prefer rather than require a bachelor's degree in a related specialty for the position of engineering technician. For this reason, the director was not persuaded by the petitioner's claim that the proffered position is a specialty occupation.

A thorough review of the *Handbook* discloses that the duties of the proffered position are performed by engineering technicians. As discussed in the *Handbook*, engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance . . . . Many engineering technicians assist engineers and scientists, especially in research and development. The *Handbook* further specifies:

*Mechanical engineering technicians* help engineers design, develop, test, and manufacture industrial machinery, consumer products, and other equipment. They may assist in product tests—for example, by setting up instrumentation for auto crash tests. They may make sketches and rough layouts, record and analyze data, make calculations and estimates, and report on their findings. When planning production, mechanical engineering technicians prepare layouts and drawings of the assembly process and of parts to be manufactured. They estimate labor costs, equipment life, and plant space. Some test and inspect machines and equipment or work with engineers to eliminate production problems.

The *Handbook* reports the following about the training requirements for engineering technicians:

Although it may be possible to qualify for a few engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology.

The petitioner fails to establish the first criterion because the *Handbook* states that employers of engineering technicians prefer, but do not require, applicants with bachelor's degrees with an engineering emphasis. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner provided no evidence to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a specific degree as required by the second alternative prong of the second criterion.

Nor is there evidence in the record to establish the third criterion 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.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that 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. On appeal, counsel contends that the beneficiary will research and design new machines and equipment for the petitioner's future business lines. The record contains no evidence of designing machines. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported 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). Counsel has not differentiated the duties of the proffered position from those normally found in an engineering technician position. As noted by the director and not addressed by the petitioner on appeal, the petitioner claimed on its petition that it is engaged in research and the manufacture of vitamins and minerals, yet a copy of its web-page that was submitted by the petitioner indicates that it is involved in supplying all the packaging needs of the domestic and international natural food and supplement industry. To the extent they are described in the record, the duties do not appear so specialized or complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that the proffered position is performed by an engineering technician, an occupation that does not require a bachelor's degree in a specific specialty.

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.

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.