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JUL 31 2007

FILE: SRC 06 069 52062 Office: TEXAS SERVICE CENTER Date:

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:

[REDACTED]

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 Director, Texas 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 provides process safety management services, employs 21 staff, and had a gross annual income of \$1.3 million in 2004. It seeks to employ the beneficiary as a chemical engineering technician. Accordingly, 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).

On April 10, 2006, the director denied the petition determining that the record did not establish the proffered position as a specialty occupation. On appeal, counsel for the petitioner asserts that despite the job's title of "chemical engineering technician" the job duties of the position require a minimum of a bachelor's degree in engineering.

The record of proceeding before the AAO contains: (1) the Form I-129 petition filed December 28, 2005 and supporting documentation; (2) the director's January 28, 2006 request for evidence (RFE); (3) counsel's March 21, 2006 response to the director's RFE; (4) the director's April 10, 2006 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner has established that the proffered position is 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a chemical engineering technician. In a December 23, 2005 letter appended to the Form I-129 petition, the petitioner listed the following duties for the proffered position:

Applies chemical engineering principles and technical skills to assist Chemical Engineer in developing, improving, and testing pressure relief valves, flare header analysis in a petrochemical plant. Perform calculation, provide feasible solution by incorporate [sic] its designs to the P&ID diagrams. Preparing analysis for the requirement of OSHA and EPA regulation.

The petitioner indicated that it required the services of a chemical engineering technician with a minimum of a bachelor's of science degree in chemical engineering and that it had not previously hired workers with less training and experience than that which is required in the job offered.

On January 28, 2006, the director issued an RFE noting that the job duties were generally described and requesting an expanded description and additional support for the duties of the proffered position.

In a March 21, 2006 response to the director's RFE, counsel for the petitioner referenced the Department of Labor's *Dictionary of Occupational Titles (DOT)* and noted that the Specific Vocational Preparation (SVP) for the occupation of chemical engineering technician is equal to eight (8). In addition, counsel submitted a March 7, 2006 letter from the petitioner confirming the offer of employment and describing the proposed duties of the position as:

Applies chemical engineering principles and technical skills to assist Chemical Engineer in developing, improving, and testing pressure relief valves, flare header analysis in a petrochemical plant. Prepare[s] charts, sketches, diagrams, flow charts, and compiles and records engineering data to clarify design details or functional criteria of chemical processing

and physical operation units. Participates in fabricating, installing, and modifying equipment to ensure that critical standards are met. Tests developmental equipment and formulates standard operating procedures. Tests processing equipment and instruments to observe and record operating characteristics and performance of specified design or process. Perform[s] calculation, provide feasible solution by incorporating its designs to the P&ID diagrams. Preparing analysis for the emission requirements of OSHA and EPA regulations. Performs preventive and corrective maintenance of chemical processing equipment. Observes and confers with equipment operators to ensure specified techniques are used. Writes technical reports and submits finding to Chemical Engineer.

Counsel also attached the *DOT's* description of a chemical engineering technician position.

On April 10, 2006, the director denied the petition. The director noted that the title of a position did not control whether a position was a specialty occupation, but that the duties of the position controlled the determination. The director referenced the Department of Labor's *Occupational Outlook Handbook (Handbook)* and observed the *Handbook's* report that a chemical engineering technician may qualify for engineering technician jobs without formal training but that most employers preferred individuals with at least a two-year associate degree in engineering technology. The director acknowledged the excerpt from the *DOT* for the occupation of a chemical engineering technician but noted that an SVP rating does not necessarily indicate the amount of formal post secondary baccalaureate education. The director concluded that the record was insufficient to establish that the duties of the proffered position satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner repeated the description of duties provided in the petitioner's March 7, 2006 letter, observed that the director had not provided a description for a chemical engineering technician, and disagreed with the director's conclusion that an individual with an associate degree could perform the duties of the position. Counsel also submits two letters from professional engineers. The first letter, dated May 4, 2006 and authored by [REDACTED] a registered professional engineer, contains the same description of duties as contained in the petitioner's March 7, 2006 letter. [REDACTED] opines that the duties described require someone who has a minimum of a bachelor's degree in chemical engineering or mechanical engineering and notes that the calculation involved in heat transfer and mass transfer at unit operation can only be performed by someone who has a bachelor's or master's degree in chemical engineering. The second letter, dated May 3, 2006, authored by [REDACTED], a professor in the chemical engineering department at Lamar University in Beaumont Texas, contains the same description as contained in the petitioner's March 7, 2006 letter. [REDACTED] opines that the calculation involved in developing, improving, and testing relief valves and flare header analysis typically involves heat and mass transfer calculation, with application of industrial standards and code compliances. [REDACTED] stated that he had used the Lamar University's course curriculum in chemical engineering to illustrate the types of courses the individual performing these duties must have and as a comparison, the types of courses offered by a community college. The record contains a list of chemical engineering courses offered by Lamar University and a list of course descriptions apparently offered by Houston Community College to obtain a chemical laboratory technology certificate.

The AAO has fully considered all the petitioner's evidence submitted and does not find counsel's assertion persuasive. The AAO has reviewed the petitioner's initial description of the position and notes that the proffered position is a position that will assist a chemical engineer in certain tasks. The initial description does not provide sufficient information regarding the tasks of an assistant to an engineer to determine whether the actual tasks require specialized knowledge obtained only through study at a four-year accredited university. The petitioner in its March 7, 2006 response to the director's RFE, tracks the language of the *DOT's* description of a chemical engineering technician. The petitioner failed to provide more detail regarding the proffered position as it relates to its business, but rather provided a generic list of functions used by the *DOT* to describe an occupation. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In this matter, the record does not contain details of the actual work to be performed for this position. The AAO cannot determine from such a generalized description the actual duties involved in performing the tasks of the position. The record does not contain a detailed description sufficient to determine that the beneficiary's daily tasks in assisting a chemical engineer would require specialized knowledge obtained only through study that results in a bachelor's or higher degree in a specific discipline.

The AAO acknowledges the letters submitted on behalf of the petitioner by [REDACTED] and [REDACTED]. However, both individuals reviewed the description contained in the *DOT* for a chemical engineering technician. Neither individual indicates that they reviewed company information about the petitioner, visited the petitioner's worksite(s), or interviewed the petitioner. Neither [REDACTED] nor [REDACTED] provides sufficient details about the proffered position in relation to the petitioner's safety management services. The AAO observes that [REDACTED] notes that calculation involved in developing, improving, and testing relief valves and flare header analysis, a duty initially described by the petitioner, typically involves heat and mass transfer calculation. However, [REDACTED] use of the word "typically" suggests that he is not certain of the actual duties of the proffered position. The AAO finds that there is an inadequate factual foundation established to support either of the opinions. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO has also reviewed the coursework for the claimed two-year program apparently offered by Houston Community College to obtain a chemical laboratory technology certificate and the course curriculum in chemical engineering at Lamar University. The AAO does not find either description useful, as there is no accompanying analysis for the courses that specifically pertain to the proffered position. The AAO also notes that the coursework at Lamar University appears to relate to a degree in chemical engineering, while the proffered position is for an individual who will assist a chemical engineer in performing certain tasks. The AAO does not find sufficient evidence in the record to establish the proffered position as a specialty occupation.

The AAO will briefly discuss each of the regulatory criteria to establish the proffered position as a specialty occupation and the deficiencies of the record as applicable to each. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations to assist in determining whether a bachelor's or higher degree is normally the minimum requirement for entry into a particular occupation. The 2006-2007 edition of the *Handbook* reports:

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. Their work is more limited in scope and application-oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests, or collecting data.

The *Handbook* includes the following discussion regarding training and other qualifications for engineering technicians:

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.

Thus, the *Handbook* does not report that a bachelor's or higher degree is normally the minimum requirement for entry into an engineering technician position.

The AAO acknowledges the excerpt from the *DOT* regarding the position of chemical engineering technician. However, as the director noted, the *DOT* is not considered 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. The *DOT* provides 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. An SVP rating is meant to indicate 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. Again, the record does not demonstrate that the occupation of a chemical engineering technician would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

Again, the AAO notes the letters submitted by [REDACTED]s and [REDACTED] and the failure of both authors to provide specific information pertinent to the proffered position rather than opinions regarding a generic overview of a position. The AAO finds the record insufficient to establish that the proffered position requires the attainment of a baccalaureate or higher degree or its equivalent as the minimum for entry into the position. The petitioner has failed to satisfy the requirement of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. The petitioner has not provided a meaningful job description and absent such a job description the petitioner may not establish the position's duties as parallel to any degreed positions within similar organizations in its industry or distinguish the position as more complex or unique than similar, but non-degreed, employment, as required by alternate prongs of the second criterion. Going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*,

22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). A review of the record finds it insufficient to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. The petitioner does not indicate that it has previously hired individuals to fill this position. The AAO notes further that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided sufficient evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, the AAO observes that the petitioner has not provided a detailed description of the proposed duties. The AAO cannot conclude that any of the beneficiary's tasks assisting a chemical engineer are duties that are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. 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.