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U.S. Citizenship and Immigration Services

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FILE: EAC 06 171 51335 Office: VERMONT SERVICE CENTER Date: NOV 28 2007

IN RE: Petitioner:
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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. 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 recycling services to solvents users. It claims to employ seven individuals and to have $850,000 in gross annual income. It seeks to employ the beneficiary as a recycling project manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner asserts that the petitioner provided compelling evidence sufficient to establish the proffered position as a specialty occupation and that the director's decision to the contrary is in error.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 18, 2006 with supporting documentation; (2) the director's May 31, 2006 request for further evidence (RFE); (3) counsel for the petitioner's August 9, 2006 response to the director's RFE and supporting documentation; (4) the director's August 24, 2006 denial letter; and (5) the Form I-290B, with counsel's brief on appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meets its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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
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> (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.

In a March 30, 2006 memorandum appended to the Form I-129, counsel for the petitioner indicated that the beneficiary in the proffered position of recycling project manager: "will be assigned to conduct independent project management, evaluation, performance, execution, business development, research and analysis in the field of recycling projects for the petrochemical, chemical, and oil industries" and will function as a project manager overseeing recycling projects involving these industries.

The petitioner in an attachment to the petition stated:

> [The petitioner] has need of a Recycling Project Manager to maintain, service and modify scientific and technical production equipment. This equipment is used to analyze, mix, distill, process and package solvents and liquids recycled by our company. The candidate should have knowledge of precision welding and metalworking, as well as electronics, microelectronics and solid-state electronics. He needs to be able to read and implement technical drawings and schematics. He will also need to project and build equipment to meet business plans.

In response to the director's RFE, the petitioner listed the job skills needed for the position indicating:

> In order for [the petitioner] to develop new business we need to generate equipment capable of purifying new chemicals. To this end, we have a need of an employee who is capable of talking to scientists and engineers about their new solvents. The individual must be able to obtain technical data about specifications and processing procedure. Additionally, the individual must be capable of applying this information to our existing distillation equipment and implementing modifications to allow [the petitioner] to recover these new products. A good knowledge of technical process, thermodynamics and fractional distillation process is required; together with knowledge of material compatibility and resistance to chemicals involved. We have a need to develop small scale equipment in our laboratory to test these processes. Further, the individual must possess the ability to translate this information to drawings and then build distillation

equipment. This requires drafting skills, an ability to read technical drawings, precision welding of high tech materials, a knowledge of heat transfer and cooling technologies, a working knowledge of boilers and high pressure liquid transfers and general product safety and hazard assessment abilities.

The petitioner included the daily tasks of the proffered position as:

Supervise all daily jobs and verify equipment and workers as qualified. Analyze and certify all outgoing chemistry. Verify and cross check all incoming material and MSDS Sheets as to safety and hazard potential. Monitor and adjust equipment in operations. Maintain daily logs. Make sure that all projects are progressing and will be completed on time.

The petitioner indicated it employed five personnel including: (1) a partner in the company who has a bachelor's of science degree in chemical engineering; (2) a partner with a [redacted] in chemistry; (3) a warehouse manager/logistics; (4) a chemical operator; and (5) an administrative assistant. The petitioner also provided:

A copy of a "nonconformance report," that the individual in the proffered position would use to fulfill the duties of the position. The petitioner asserted that the report evidenced the complexity of the position.

A July 13, 2006 letter written by the president of a resource recovery company wherein the president stated: "I can confirm the fact that the work undertaken in our industry and that performed by [the petitioner] requires extensive education. All of the employees involved in processing and testing of recycled chemistry need the advantages offered by technical degrees." The author of the letter noted that knowledge of high math, drawing, electrical engineering, metal welding, cutting, heat transfer, occupational safety and hazards is critical in the industry.

An August 2, 2006 letter authored by a professional engineer who opined that the petitioner, a company that offered a highly technical service in recycling and distilling cleaning chemistry, would require specific technical knowledge and training to process and certify that they are within product specification; that the petitioner operates and modifies its own equipment and would require technical sophistication in their personnel; and that a properly degreed and trained staff is essential for the petitioner to offer its services.

An August 7, 2006 letter authored by the vice-president of Micro Care Corporation that indicated his company's products and those provided by other companies require specific technical knowledge and training to process and certify that they are within product specification; that the petitioner operates and modifies its own equipment and would require technical sophistication in their personnel; and that a properly degreed and trained staff is essential for the petitioner to offer its services.

A July 31, 2006 letter authored by the petitioner's managing partner that explained the petitioner's role in recycling, distilling, and cleaning chemicals for reuse. The petitioner stated: "[a]n

> important element of our service is for us to have qualified and capable personnel that not only have the scientific training but also possess the hands on ability to design build and operate the equipment we need in this business." The petitioner indicated the beneficiary possessed the skills and qualifications to fill the proffered position.
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> Two articles outlining how solvent recovery works, the equipment involved in the process, and describing the introduction and expansion of mobile solvent recyclers.

On August 24, 2006, the director denied the petition. The director noted the petitioner's descriptions of duties and determined that the job duties did not appear to be of such complexity, uniqueness, or specialization as to require the attainment of a bachelor's degree in a specific field of study. The director found that the described duties most closely corresponded to duties involved in hazardous materials removal, an occupation that did not require formal training at a university level. The director referenced the industry letters submitted in response to his RFE and the petitioner's description of its personnel and concluded, without analysis, that the record did not evidence that the specific nature of the duties qualify as a specialty occupation or that the petitioner or others in the industry routinely require a bachelor's degree in a specific field of study as a prerequisite for the job offered.

On appeal, counsel for the petitioner asserts: that the proffered position is not comparable to a hazardous waste removal worker; that a degree requirement is common to the industry in parallel positions among similar organizations as attested by four professionals within the industry; that the industry articles and the "nonconformance report" provided are strong support of the complexity and uniqueness of the industry and the position; and that the nature of the specific duties performed by a recycling project manager are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of advanced education. Counsel contends that the evidence submitted should satisfy the burden placed on the petitioner to show that the position offered is a specialty occupation.

To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. The AAO agrees that the petitioner has not described a hazardous waste removal position. However, the AAO does not find that the petitioner has presented sufficient evidence to determine that the proffered position requires the theoretical and practical application of a highly specialized body of knowledge attained through a four-year course of study at the university level, culminating in a bachelor's or higher degree or its equivalent in a specific discipline.

The AAO turns first to the description of the proffered position and the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) in an effort to determine whether the *Handbook* offers information on the described position. The 2006-07 edition of the *Handbook* describes several positions that incorporate the duties of the proffered position. For example, under the heading "Engineering Technicians," 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.
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> Engineering technicians who work in research and development build or set up equipment; prepare and conduct experiments; collect data; calculate or record results; and help engineers or scientists in other ways, such as making prototype versions of newly designed equipment. They also assist in design work, often using computer-aided design and drafting (CADD) equipment.

The 2006-07 edition of the *Handbook* also indicates, under the heading "Science Technicians" that:

> Chemical technicians work with chemists and chemical engineers, developing and using chemicals and related products and equipment. Generally there are two types of chemical technicians: research and development technicians who work in experimental laboratories and process control technicians who work in manufacturing or other industrial plants. Many research and developmental chemical technicians conduct a variety of laboratory procedures, from routine process control to complex research projects. For example, they may collect and analyze samples of air and water to monitor pollution levels, or they produce compounds through complex organic synthesis. Most process technicians work in manufacturing, testing packaging for design, integrity of material, and environmental acceptability. Often process technicians who work in plants also focus on quality assurance, monitoring product quality or production processes and developing new production techniques. A few work in shipping to provide technical support and expertise for these functions.

The 2006-07 edition of the *Handbook* reports that the duties of a maintenance/repair worker include:

> [General maintenance and repair workers] repair and maintain machines, mechanical equipment, and buildings and work on plumbing, electrical, and air-conditioning and heating systems.
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> * * *
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> General maintenance and repair workers inspect and diagnose problems and determine the best way to correct them, frequently checking blueprints, repair manuals, and parts catalogs.
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> * * *

> General maintenance and repair workers also perform routine preventive maintenance and ensure that machines continue to run smoothly, building systems operate efficiently, and the physical condition of buildings does not deteriorate.

The *Handbook* also discusses the educational requirements associated with the above positions. The *Handbook* reports that most employers prefer to hire individuals with at least a two-year associate degree in engineering technology for an engineering technician position and two years of specialized training or an associate's degree in applied science or science-related technology for a chemical technician position. The *Handbook* recognizes that most maintenance and repair workers learn their skills informally on the job. The *Handbook* does not list a baccalaureate or higher degree as a minimum requirement for entry into any of the above-described positions.

Upon review of the petitioner's description of the proffered position, the AAO finds that the duties contain elements that are more complex than a routine maintenance and repair worker but have not been described as so complex as to require a baccalaureate or higher degree in a specific discipline. For example, duties such as maintaining, servicing, and modifying technical production equipment and building equipment suggest that the position is a maintenance and repair worker but the nature of the petitioner's business suggest that the duties require the technical skill of an engineering technician. Verifying, monitoring, and adjusting equipment and incoming material; analyzing and certifying outgoing chemistry; maintaining daily logs; and supervising workers and projects are duties that require the services of a technician or a supervisory technician. The AAO acknowledges the petitioner's indication that the beneficiary in the proffered position must have technical skills, including welding and metalworking, knowledge of electronics, microelectronics and solid-state electronics, of technical process, thermodynamics and fractional distillation process material compatibility, and resistance to chemicals involved, as well as the ability to talk to scientists and engineers about new solvents. However, the petitioner does not substantiate that these are skills that are learned through a four-year course of study at the university level, rather than through training at a vocational or technical school. The petitioner indicates that the beneficiary will use his technical skill to translate information to drawings and build distillation equipment and will need drafting skills and an ability to read technical drawings, skills that appear to relate most closely to the skills associated with an engineering technician or chemical technician position.

The petitioner in this matter does not describe: the mathematical methods the beneficiary would use to build distillation equipment; the tasks involved in analyzing and certifying outgoing chemistry and maintaining daily logs; or how the beneficiary's duties require theoretical knowledge of thermodynamics, of fractional distillation process, of material compatibility, and of resistance to chemicals involved, gained through a four-year course of study at the university level. Further, nothing in the petitioner's description of the skills necessary for the proffered position indicates that the skills are skills obtained at a university rather than a vocational institution. The petitioner has provided a general overview of a position and the necessary technical skills associated with the position without the comprehensive details necessary to demonstrate that the tasks involved include the theoretical and practical application of a body of highly specialized knowledge evidenced by the attainment of a bachelor's or higher degree in a specific specialty.

The AAO acknowledges the statements of individuals in the industry and the professional engineer regarding the petitioner's business and the proffered position. Although the authors opine that the work in the industry: "requires extensive education;" "requires technical degrees;" "require[s] specific technical knowledge and training

to process and certify that they are within product specification;" and "require[s] technical sophistication in [the] personnel;" the authors do not describe the specific discipline needed for study and do not state that a baccalaureate or higher degree is required. The AAO notes that one individual indicates that knowledge of high math, drawing, electrical engineering, metal welding, cutting, heat transfer, occupational safety and hazards is critical to the industry but again, the author does not detail the level of study necessary for the proffered position. The knowledge described suggests that the training and skill would be readily accessible at a vocational or associate level. Neither do the letters submitted nor the description of duties demonstrate that the duties of the position require a baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the position.

The record in this matter does not provide enough substantive detail to enable CIS to find that the position is that of a specialty occupation rather than that of a skilled technician. The petitioner's description, the letters submitted, and the articles describing the nature of the petitioner's business do not demonstrate that the position incorporates duties that require the theoretical and practical application of a body of highly specialized knowledge that requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry into the occupation in the United States. The petitioner in this matter has failed to substantiate that its projects require the individual in this position to have a university-level education. Going on 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 Dec. 190 (Reg. Comm. 1972)). Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)* – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(2)*, a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The AAO again acknowledges the letters submitted by individuals in the petitioner's industry. However, the letter writers do not detail the type of work the beneficiary in the proffered position will perform and do not indicate the level of courses the individual in the position must have to perform the duties of the position. Moreover, the letters offer conclusory statements without the underlying detail and analysis explaining the necessity of a four-year degree. The AAO finds that the individual in the proffered position will need technical skill and training; however nothing in the record suggests that the training must include four years of study at the university, as is required to establish the position as a specialty occupation. Thus, the record does not contain evidence of an industry-wide educational standard establishing the position is a specialty occupation. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(2)*.

In the alternative the petitioner may offer evidence to establish that the proffered position is so complex or unique that only an individual with a degree can perform the position. In this matter, the AAO has reviewed the petitioner's "nonconformance report," a report offered to show the complexity of the position. A review of the report reveals that it is technically specific, but the report does not demonstrate that completing or reviewing the report requires analysis and the application of theoretical knowledge consistent with that obtained through study

culminating in a baccalaureate degree in a specific discipline. The record does not contain information elevating the duties of the position to more than technical skill and knowledge. The petitioner has not established that the proffered position is a specialty occupation by distinguishing the position from similar, but non-degreed (at the baccalaureate level) employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(2)*.

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(3)*, whether the employer normally requires a degree or its equivalent for the position. The AAO usually 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 to analyze this criterion. In this matter, the petitioner has not provided evidence that it previously hired an individual to fill the position of recycling project manager. The AAO acknowledges the petitioner's indication that it must have capable and qualified personnel that have scientific training and the ability to design, build, and operate its equipment; however, while a petitioner may believe that a proffered position requires a baccalaureate degree in a specific discipline or want the position to be filled by an individual with a baccalaureate degree in a specific discipline; the petitioner's opinion and desire do not establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then 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. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(3)* based on its normal hiring practices.

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*, whether the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The AAO here incorporates its above discussion of the duties of the position, the nonconformance report, and the letters submitted by individuals in the industry. Again, the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. The petitioner has described the duties of the position and included information regarding the nature of its business; this evidence shows that the proffered position requires technical skill and knowledge but is insufficient to establish that the knowledge involved is usually associated with the attainment of a baccalaureate degree in a specific field of study. The record does not contain documentary evidence that the duties of the proffered position contain elements significantly different from that of a chemical technician or an engineering technician, occupations that neither require nor are associated with a bachelor's degree in a specific discipline. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical skilled chemical technician or engineering technician. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(4)*.

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not provided sufficient evidence to establish that the beneficiary is eligible to perform the duties of a specialty occupation. The record includes a translated copy of the beneficiary's diploma from the Nukus Construction College certifying that the beneficiary attended the college

from 1973 and completed the full curriculum in 1976 in an industrial and civil construction specialization. The record also contains a letter from the beneficiary's employer from 1976 through 2000 indicating that the beneficiary was employed at the Takhiatash State Power Station as a welder, a welding trainer, a foreman in the boiler shop, and was responsible for automatic control systems, supervising personnel in repair works, developing technical documentation for boiler and turbine aggregates, and preparing equipment for usage. The record also includes information that the beneficiary was employed as a technician of medical therapy devices, a driver, and a managerial driver. The record does not include a credentials evaluation of the beneficiary's foreign academic education and does not contain evidence that the beneficiary's previous employment included training and/or work experience involving the theoretical and practical application of specialized knowledge required by a specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in a specific specialty occupation. For this additional reason, the petition will not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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