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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 02 241 54184 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
Beneficiar[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.

Mari Johnson

Robert P. Wiemann, Director
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 appeal will be dismissed. The petition will be denied.

The petitioner is an electronic parts and components distributor. It seeks to employ the beneficiary as a quality control engineer, and endeavors 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 denied the petition because the proffered position was not a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be considered is whether the offered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a quality control engineer. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to evidence the beneficiary would: ensure the quality of raw material and equipment for the company; ensure the quality of new tools and models to be shipped to the petitioner's Mexican factory by visually inspecting and reviewing the condition of the tools and models for nicks, scratches, hit marks, or other damage; determine raw material specifications such as color matching, material weight, thickness, and length; determine raw material specifications to match specific Mexican facility machine parameters such as pressure, upper and lower temperature, curing time, and air release gaps; develop and communicate directives to the Mexican production department supervisors regarding material specifications and machine parameters; inspect, test, and evaluate completed products for quality defects; improve sampling procedures to determine product quality prior to shipment to customers; ensure the safest and most economical manner to pack manufactured pieces and issuing instructions regarding packing specifications; communicate manufacturing control instructions to the Mexican production department; and document quality defects and other problems for management decision-making. The petitioner requires a minimum of a bachelor's degree in electrical engineering for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation and meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The petitioner states that the position is that of a quality control engineer requiring a bachelor's degree in electrical engineering. The *Handbook* notes that electrical and electronics engineers design new products, write performance requirements, and develop maintenance schedules. They also test equipment, solve operating problems, and estimate the time and cost of engineering projects. The duties

detailed for the offered position do not include these complex responsibilities. Nor do they include the complex responsibilities referenced by the petitioner in the Dictionary of Occupational Titles for a quality control engineer. The duties of the offered position as described, appear to be primarily those of "inspectors, testers, sorters, samplers, and weighers" as defined in the *Handbook*. Educational requirements for those positions range from a high school diploma to some postsecondary training programs in testing. Many employers prefer to train inspectors on the job. More complex positions are filled by experienced assemblers, machine operators, or mechanics who already have a thorough knowledge of the products and production processes. Advancement to more responsible positions may require training in statistical process control, new automation, or quality assurance policies. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted copies of job advertisements. Those advertisements, however, were for engineering positions. This position is not that of an engineer. Accordingly, the advertisements are of little evidentiary value. The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the duties of the position offered are routine for quality control inspectors/supervisors and similar positions. They are not so complex or unique that they can only be performed by someone with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner further asserts that the AAO and/or CIS has previously determined that the offered position qualifies as a specialty occupation in that previous petitions for similar applicants have been approved. The petitioner's reference to approvals of unrelated petitions does not sustain its burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the complete records of proceeding of the petitions referred to by counsel. In the absence of all of the corroborating evidence contained in those records of proceeding, the AAO is unable to determine whether the positions are indeed similar. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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