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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

APR 25 2005

FILE: EAC 03 255 53447 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
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:

[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, 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 specializes in the sales and service of lift trucks and loading dock equipment. It seeks to employ the beneficiary as a mechanical engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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. On appeal, counsel submits a brief and additional evidence, including samples of hydraulic circuits, electrical circuits, and trouble shooting procedures, as well as website information from businesses engaged in similar activities.

Section 214(i)(l) of 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.

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 supporting documentation. 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 I-129 petition; the petitioner's August 12, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: researching, planning, designing, and coordinating activities involved in the operation, application, and repair of mechanical or electro-mechanical components of lift trucks and loading dock equipment; developing and analyzing equipment specifications, performance requirements, cost analysis, and proposals for integrating the mechanical and electro-mechanical components systems into lift trucks and loading dock equipment; researching and analyzing data such as design proposals, specifications, and manuals to determine feasibility of designs and their application; determining mechanical and electro-mechanical system components specifications; applying algebraic and geometric formulas and standard mechanical engineering data to design and develop systems and components configuration; designing processing methods to test feasibility of new applications of systems components and recommending improved procedures; directing and coordinating equipment installation activities; and observing setup and tryout of newly developed equipment systems to evaluate and determine need for redesign or changes. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in mechanical engineering.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a mechanical engineer. Counsel also states that the proposed duties, which entail solving the problems that occur in the warranty periods, coordinating the investigation of malfunction breakdown applying failure analysis methods, and giving technical support and training to sales teams, technicians, and repairmen, are so complex that a baccalaureate degree in mechanical engineering is required. Counsel states further that, although the petitioner's key supplier, TCM Manufacturing USA (TCM), previously provided engineering services for the petitioner, TCM has discontinued the provision of such services. Counsel additionally states that the degree requirement is industry wide. Counsel also states that the petitioner employs 23 workers; the 230 workers claimed on the petition was a clerical error.

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 turns first to 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 Department of Labor's *Occupational Outlook Handbook* (*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*, 712 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 AAO does not concur with counsel that the proffered position is that of a mechanical engineer. The job duties do not primarily entail the level of responsibility of a mechanical engineer, whose duties are described in the *Handbook*, 2004-2005 edition, as researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices. *See the Handbook*, at 137. In this case, the record contains no evidence that the petitioner, which provides sales and service of lift trucks and loading dock equipment, is engaged in research, design, or manufacturing activities. Furthermore, the brochure of the petitioner's supplier, TCM, states, in part, as follows: "Each TCM Lift Truck Dealer is factory trained on all technical aspects of the lift truck. Our extensive training programs and monthly service bulletins keep our technicians current on the service and maintenance aspects of the TCM Lift Truck." Nothing is mentioned about the provision of services of mechanical engineers on the dealer sites. The proffered position is similar to a Heavy Vehicle and Mobile Equipment Service Technician or Mechanic, as described in the *Handbook* at pages 543-544. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for such a position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted website material for other businesses that are involved with forklift and loading dock equipment sales and services. There is no evidence, however, to show that the website businesses are similar to the petitioner. One of the companies, The Raymond Corporation, indicates that it utilizes engineers in its product development technical center. The petitioner, however, has provided no evidence that it also has a product development technical center. Furthermore, Caterpillar and Komatsu Forklift U.S.A., Inc. are manufacturers. As noted previously, the petitioner is not a manufacturer. Thus, the website material has no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*2*).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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.