

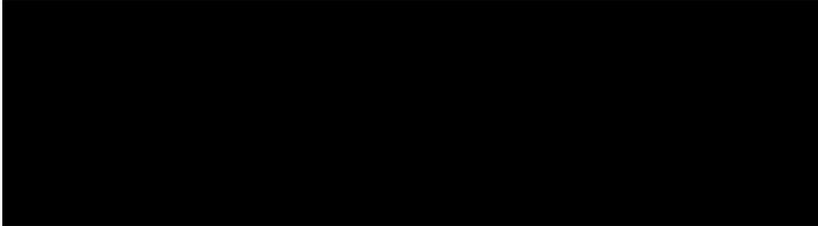
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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

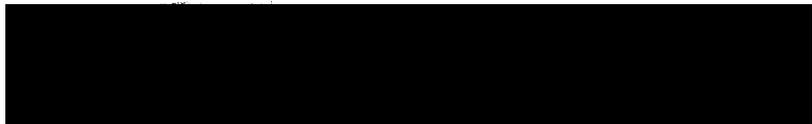
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FILE: WAC 04 053 50170 Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a nursing facility. It seeks to employ the beneficiary as a mechanical engineer and 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 on the ground that the proffered position does not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a 99-bed nursing facility, established in 2001, with 71 employees and gross annual income of more than \$1 million. The petitioner stated that it intended to hire the beneficiary as a mechanical engineer to oversee renovation of the mechanical and electromechanical systems in its buildings, in particular the heating and air conditioning systems. The beneficiary is qualified for the position, the petitioner declared, by virtue of his bachelor of science in mechanical engineering from Mapua Institute of Technology in the Philippines, granted in 1988, and his years of experience in the profession. In response to the RFE the petitioner listed the specific duties of the proffered position, and the percentage of time each duty would take, as follows:

- Research, plan, design, and implement the mechanical and electromechanical systems of the project, including the schematic transformation of electrical and fire safety devices – 25%.
- Research and analyze data, such as design proposals and specifications to determine feasibility of design or application – 25%.
- Direct and coordinate activities involved in operation, application, installation, and repair of the mechanical systems – 20%.
- Oversee the installation, operation, maintenance and repair of equipment for centralized heat, gas, water, and steam systems – 15%.
- Direct and coordinate the installation activities to ensure conformance to engineering design and management specifications – 15%.

The petitioner stated that the beneficiary would be supervising HVAC (thermodynamic) technicians and working with civil engineers, electrical engineers and other professionals.

In his decision the director found that the beneficiary would not be performing the duties of a mechanical engineer in the proffered position. In the director's view, the duties of the proffered position were similar to those of electrical and electronics engineering technicians, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director quoted information in the *Handbook* indicating that a baccalaureate level of educational training in engineering is not a normal, industry-wide minimum requirement for entry into the occupation. Based on the evidence of record, the director determined that the petitioner had failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, that the position was so complex and unique or the duties thereof so specialized and complex that a specialty degree or baccalaureate level knowledge is required to perform them, or that the petitioner normally required a specialty degree for the position. The director concluded that the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the director erred in categorizing the proffered position as that of an electrical and electronics engineering technician, instead of a mechanical engineer. The beneficiary would be hired "to handle the total conversion and rehabilitation of its centralized heating and air-conditioning (HVAC) system," the petitioner explains, which requires the services of a mechanical engineer. The petitioner contends that the director ignored a letter from the operations administrator which provided detailed information about the duties of the proffered position. The petitioner also resubmits a copy of its job announcement, which specifies that a bachelor's degree is required.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and

educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti v. Reno, Inc., id.*, at 1165-66.

The occupation of mechanical engineering is described in the *Handbook*, 2004-05 edition, at 137-38:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines. They also develop power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work

Mechanical engineers work in many industries, and their work varies by industry and function. Some specialize in energy systems; applied mechanics; automotive design; manufacturing; materials; plant engineering and maintenance; pressure vessels and piping; and heating, refrigeration, and air-conditioning systems. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

. . . . More than half of the jobs [nationwide in 2002] were in manufacturing – mostly in machinery, transportation equipment, computer and electronic products, and fabricated metal products manufacturing industries. Architectural, engineering, and related services, and the Federal Government provided many of the remaining jobs.

Based on the evidence of record, the AAO is not persuaded that the proffered position fits the *Handbook's* description of a mechanical engineer. There is no indication in the *Handbook* that nursing facilities like the petitioner normally hire mechanical engineers as in-house employees to oversee the renovation of the heating and air-conditioning systems in their buildings. The petitioner describes the duties of the proffered position in general terms that provide little information about the level of engineering expertise required. Additional details are provided in the letter from the operations administrator, dated March 31, 2004, to whom the beneficiary would report. That letter describes the job duties as follows:

[The petitioner] is in need of total conversion and rehabilitation of our centralized air-conditioning system. This will include but not [be] limited to the replacement of defective refrigerant compressors, motors, instrument accessories and auxiliaries and some of the old dilapidated refrigerant pipelines embedded on concrete walls, floors and ceilings. The existing water boilers and gas burners needed for air and water distribution

in patient rooms, laundry rooms and [the] dietary kitchen area need to be updated to conform with the mandatory standard. This is one area that we need to address to comply with the annual inspection by the City Licensing Office and the Department of Health.

All mechanical conversions require replacement of damaged and defective wirings, circuit breakers, panel boards and main power distribution frame. A set of fire safety devices, controls and auxiliaries will also be installed to ensure safety of all occupants and the building itself. We are in need of a mechanical engineer to handle the planning and implementation [of] the mechanical and electromechanical systems of the project, including the schematic transformation of electrical and fire safety devices.

The foregoing duties do not reflect the functions of a mechanical engineer, as described in the *Handbook*. The duties described by the operations administrator do not include hallmark duties of a mechanical engineering position, such as the “research, develop[ment], design, manufacture, and test[ing of] tools, engines, machines, and other mechanical devices.” *Handbook, id.*, at 137. While the petitioner claims that a baccalaureate degree in mechanical engineering is required for the proffered position, and the job advertisement specifies that a bachelor’s degree is required, the petitioner must establish that the position requires a specialty degree. The critical issue is not the employer’s self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). In this case the evidence fails to demonstrate that the performance demands of the proffered position require a degree in mechanical engineering.

The AAO agrees with the petitioner that the proffered position is not that of an electrical and electronics engineering technician, as described in the *Handbook*. Based on the job duties described by the petitioner and the operations administrator, the AAO determines that the proffered position accords with the *Handbook*’s description of a heating, air-conditioning, and refrigeration mechanic and installer. The duties of that occupation are described in the *Handbook, id.*, at 551:

Heating and air-conditioning mechanics install, service, and repair heating and air-conditioning systems in both residences and commercial establishments. *Furnace installers*, also called *heating equipment technicians*, follow blueprints or other specifications to install oil, gas, electric, solid-fuel, and multiple-fuel heating systems. *Air-conditioning mechanics* install and service central air-conditioning systems. After putting the equipment in place, they install fuel and water supply lines, air ducts and vents, pumps, and other components. They may connect electrical wiring and controls and check the unit for proper operation

With respect to the educational requirements of the occupation, the *Handbook* states that:

Because of the increasing sophistication of heating, air-conditioning, and refrigeration systems, employers prefer to hire those with technical school or apprenticeship training. Many mechanics and installers, however, still learn the trade informally on the job.

Many secondary and postsecondary technical and trade schools, junior and community colleges, and the U.S. Armed Forces offer six-month to two-year programs in heating, air-conditioning, and refrigeration.

Id. at 552. Thus, it is clear that a baccalaureate degree in engineering or a related specialty is not the normal minimum requirement for entry into the occupational field of heating, air-conditioning, and refrigeration mechanics and installers. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement in engineering is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in mechanical engineering or a related specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in mechanical engineering or a related specialty for the proffered position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in mechanical engineering or a related specialty.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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