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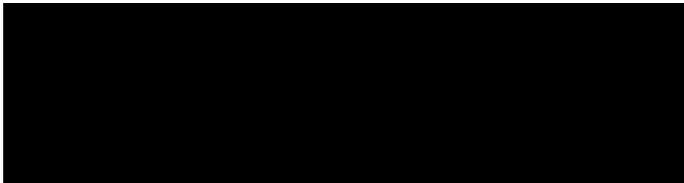
FILE: WAC 04 019 50876 Office: CALIFORNIA SERVICE CENTER Date:

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 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 director of the 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 is a food manufacturer that seeks to employ the beneficiary as a mechanical engineer. The petitioner, therefore, 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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.

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 Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing, redesigning, and rewriting technical specifications for electro-mechanical devices and installation of equipment and machines used to manufacture food; defining and interpreting criteria that are used to assemble and install equipment; developing and reviewing maintenance schedules of electrical and mechanical equipment, machines, components, and systems; overseeing non-engineering personnel in troubleshooting applications, repair, and fabricating test controls, and in preventive and corrective maintenance of machines and equipment; overseeing installation of machines and equipment; and investigating equipment failures and problems and testing mechanical components, equipment, and systems. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in engineering or a related discipline.

The director determined that the proffered position was not a specialty occupation. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) to state that the duties of the proffered position are performed by engineering technicians, and that most employers prefer to hire candidates with at least a 2-year associate degree in engineering technology for this occupation.

On appeal, counsel states that the proposed position is a specialty occupation requiring a bachelor's degree. Counsel states that the director based the denial on information contained in the *Handbook* about engineering technicians. Counsel cites to a court decision and claims that it states a petitioner's view should be given deference, a petitioner's evidence should be fully considered, and "standardized government classification systems" such as the *Handbook* should not be solely relied on. Counsel contends that the director misclassified the duties of the proffered position, and refers to the *Dictionary of Occupational Titles* (DOT) and the *Occupational Information Network* (O*Net) to state that a baccalaureate degree is required for the proposed position. Counsel states that the duties performed by a mechanical engineer generally encompass those of a mechanical engineering technician, and emphasizes that the beneficiary's duties exceed those of a mechanical engineering technician who applies knowledge of mechanical engineering technology under the direction of engineering and scientific staff. Counsel maintains that the degree requirement is common to the industry; that the petitioner normally requires a degree and that upper management has normally performed the duties of the proffered position; and that the beneficiary's proposed duties are specialized and complex, requiring a bachelor's degree.

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 first considers 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 *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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO does not simply rely on a position's title when determining whether a particular position qualifies as a specialty occupation. The specific duties of the offered position, combined with the nature of the petitioning entity's business operations and any supporting evidence, are factors that the AAO considers. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO does not agree with counsel's statement that the beneficiary would occupy a mechanical engineer position requiring a bachelor's degree in mechanical engineering. The evidentiary record shows that the petitioner is in the food manufacturing business. Given the nature of the petitioner's business operation, the petitioner would not require the services of a mechanical engineer who will:

review, redesign[,] and rewrite technical specifications for electro-mechanical devices and installation of the factory's food manufacturing equipment and machineries.

Such a duty is associated with companies engaged in research and development or manufacturing, or both. The services of an industrial machinery mechanic is more fitting for the petitioner's operations. The *Handbook* indicates:

Industrial machinery mechanics, also called industrial machinery repairers or maintenance machinists, are highly skilled workers who maintain and repair machinery in a plant or factory. To do this effectively, they must be able to detect minor problems and correct them before they become major problems. . . .

After diagnosing the problem, the industrial machinery mechanic disassembles the equipment to repair or replace the necessary parts. When repairing electronically controlled machinery, mechanics may work closely with electronic repairers or electricians who maintain the machine's electronic parts. . . . Once a repair is made, mechanics perform tests to ensure that the machine is running smoothly.

Although repairing machines is the primary responsibility of industrial machinery mechanics, they also may perform preventive maintenance and install new machinery. For example, they adjust and calibrate automated manufacturing equipment, such as industrial robots. As plants retool and invest in new equipment, they increasingly rely on mechanics to properly situate and install the machinery. . . .

Industrial machinery mechanics and machinery maintenance workers use a variety of tools to perform repairs and preventive maintenance. . . . When replacements for broken or defective parts are not readily available, or when a machine must be quickly returned to production, mechanics may sketch a part to be fabricated by the plant's machine shop. Mechanics use catalogs to order replacement parts and often follow blueprints and engineering specifications to maintain and fix equipment. By keeping complete and up-to-date records, mechanics try to anticipate trouble and service equipment before factory production is interrupted.

The petitioner stated that the beneficiary will assemble and install equipment; develop and review maintenance schedules; oversee personnel in troubleshooting applications, repair, and fabricating test controls, and in preventive and corrective maintenance of machines and equipment; oversee installation of machines and equipment; investigate equipment failures and problems; and test mechanical components, equipment, and systems. These duties are encompassed within the description of an industrial machinery mechanic.

The *Handbook* reports that industrial machinery mechanics often learn their trade through 4-year apprenticeship programs that combine classroom instruction with on-the-job-training, and that other mechanics start as helpers and learn the skills of the trade informally or by taking courses. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

One of counsel's contentions is that the *DOT* and the *O*Net* show that a baccalaureate degree is required for the proposed position. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *O*Net*. Both the *DOT* and *O*Net* provide 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. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of information contained in the *DOT* and *O*Net*.

Counsel's reference to *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal., Mar 19, 1991), is not persuasive. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

To establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the evidentiary record contains two job postings. For various reasons, the postings do not establish the second criterion. The duties in the postings for Raytheon Company and Crescent Solutions differ from the proffered position. In the Crescent Solutions posting, the candidate will plan and design mechanically functioning equipment and processes; in the Raytheon posting the candidate will build mechanical systems. The beneficiary will not perform these duties. Furthermore, as already discussed, given the nature of the petitioner's business operation, the petitioner would not require the services of a mechanical engineer to perform such duties. Finally, the organizations in the postings, an industrial manufacturer and a staffing and consulting firm, differ in nature from the petitioner. Based on the stated reasons, the petitioner fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the beneficiary's duties are performed by industrial machinery mechanics, an occupation that does not require a bachelor's degree.

Although counsel claims that the petitioner's upper management had performed the duties of the proffered position, there is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the *Handbook* discloses that the duties of the proffered position are performed by industrial machinery mechanics, an occupation that does not require a bachelor's degree.

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.