

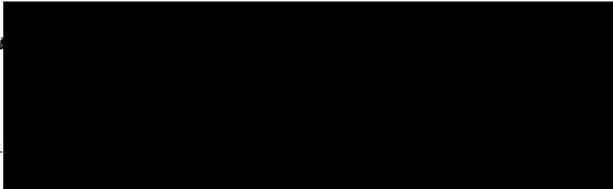
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U.S. Citizenship
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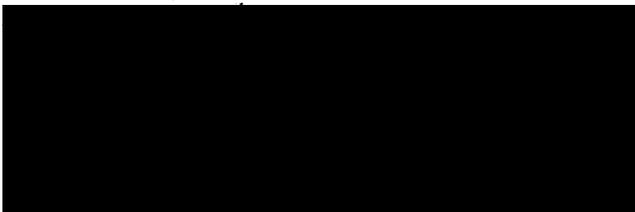
D2

FILE: WAC 03 154 50464 Office: CALIFORNIA SERVICE CENTER Date: SEP 16 2005

IN RE: Petitioner: [Redacted]
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:



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 California 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 operates a laundry and dry cleaning business and seeks to hire the beneficiary as an electrical engineer. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply 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 petitioner states that it is seeking the beneficiary’s services as an electrical engineer. Evidence of the beneficiary’s duties includes: the Form I-129 and attachment; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail performing electrical engineering and making repairs to Italian made, closed looped, dry to dry, dry cleaning machines and equipment; responsible for overall operations of these machines, including, but not limited to, maintenance, programming, programming design, re programming, repairs (mechanical and electrical, including electrical circuit design and analysis); shall be experienced in spotting methods, fabrics, dyes, spotting agents and handling of hazardous materials related to dry cleaning; and performing training and replacement. The petitioner did not indicate whether the position required a bachelor’s degree.

The director requested the petitioner to submit additional evidence that the proffered position qualifies as a specialty occupation, specifically a more detailed description of the work done, including job duties, and the percentage of time to be spent on each duty. The director requested an evaluation of the foreign education, the petitioner’s organizational chart and copies of the petitioner’s quarterly wage reports.

In response, the petitioner provided the following job description:

1. Operation, maintenance and control of dry cleaning facilities, including upgrade of process and equipment to meet new environmental requirements;
2. Train and supervise personnel involved directly in dry cleaning process and equipment and assisting personnel with operations – be able to handle and work with chemicals and to receive operation licenses; supervising and selecting personnel to obtain training in fabric and dye process using dry cleaning machines; traveling from base in San Francisco to other existing branches of the company and new branches of the company already in plans to be established; and
3. Conduct new classes and train selected personnel for spot removing positions.

The petitioner explained that dry cleaning machines consist of numerous mechanical components and complex electrical electronic and computerized control systems; therefore an experienced individual is needed

to work with the equipment. The petitioner provided an organizational chart with the beneficiary in the position of master cleaner. The petitioner provided quarterly wage reports and an educational evaluation.

In his denial, the director reviewed the proffered position's duties and referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and noted that the duties listed are those of an Industrial Machinery Installation, Repair, and Maintenance Worker. The director referenced the *Handbook* in discussing the training for Electrical and Electronics Engineers. The director noted that electrical and electronic engineers design, develop, test, and supervise the manufacture of electrical and electronics equipment rather than operate and maintain machinery as indicated by the duties described by the petitioner. The director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel contends that the director overlooked several employment functions of the proffered position. Counsel contends, "these employment functions clearly meet the requirements for the type of work performed by electrical and electronic engineers." Counsel contends that because the director failed to list all of the duties of the proffered position, the director failed to properly evaluate the position. Counsel asserts that the duties go "far beyond the duties of an industrial machinery installation, repair and maintenance worker as listed by the *Handbook*."

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of an industrial machinery installation, repair, and maintenance worker in the *Handbook*. The *Handbook* describes maintenance and repair workers in the following way:

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. For example, after hearing a vibration from a machine, the mechanic must decide whether it is due to worn belts, weak motor bearings, or some other problem. Computerized maintenance, vibration analysis techniques, and self-diagnostic systems are aiding in this task, but mechanics still need years of training and experience to perform effectively.

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. Increasingly, mechanics need electronic and computer skills in order to repair sophisticated equipment on their own. 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. They may use a screwdriver and wrench to adjust a motor, or a hoist to lift a printing press off the ground. 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.

These duties are similar to the proffered position's duties of: making repairs to Italian made, closed looped, dry to dry, dry cleaning machines and equipment; responsible for overall operations of these machines, including, but not limited to, maintenance, programming, programming design, re-programming, repairs (mechanical and electrical, including electrical circuit design and analysis.)

With respect to the educational qualifications required of industrial machine maintenance and repair workers, the *Handbook* states:

Industrial machinery mechanics, on the other hand, often learn their trade through 4-year apprenticeship programs that combine classroom instruction with on-the-job-training. These programs usually are sponsored by a local trade union. Other mechanics start as helpers and learn the skills of the trade informally or by taking courses offered by machinery manufacturers and community colleges.

Mechanics learn from experienced repairers how to operate, disassemble, repair, and assemble machinery. Classroom instruction focuses on subjects such as shop mathematics, blueprint reading, welding, electronics, and computer training.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the electrical engineer position.

The petitioner submitted no evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Again, the evidentiary record depicts the duties of the proffered position as an industrial machinery installation, repair and maintenance worker, an occupation that does not require a degree in a specific specialty.

Nor is there 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 specific 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. The duties parallel those in the *Handbook* for an industrial machinery installation, repair and maintenance worker, an occupation that does not require a specific baccalaureate degree. Counsel asserts that specific duties "go far beyond the duties of Industrial

Machinery Installation, Repair and Maintenance Worker.” Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner specifically noted that the duties of the proffered position include training and supervising personnel involved directly in dry cleaning process and equipment and assisting personnel with operations; and conduct new classes and training selected personnel for spot removing positions. These are not the duties of an electrical engineer. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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.