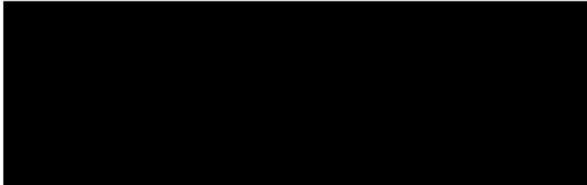


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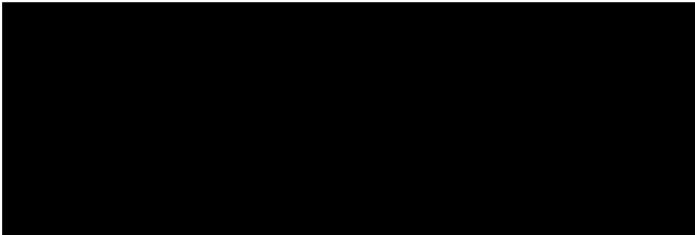
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FILE: WAC 04 203 51587 Office: CALIFORNIA SERVICE CENTER Date: JUN 26 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a manufacturer of framed art that seeks to employ the beneficiary as an entry-level operations and systems analyst. 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 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 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 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 proposed position.

In its June 14, 2004 letter of support, the petitioner stated that the duties of the proposed position would include analyzing the best use of facilities, equipment, and working staff so as to achieve the most cost efficient and productive way to make, process, store, and transport the petitioner’s art frames; ensuring the most effective warehouse layout and design; analyzing and studying inventory control procedures, taking into account the present level of inventory and incoming stocks, handling and storage of incoming materials, correct inventory size, and efficient packaging and transportation of frames to customers; studying materials flow and projects information; formulating operational methods; coordinating quality control objectives; maximizing product reliability; minimizing costs; and studying, analyzing, and seeking to adapt work conditions to suit the workforce so as to maximize its efficiency and productivity. The petitioner offered further details on these duties in its RFE response and appellate brief.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) and therefore had not established that the proposed position qualifies for classification as a specialty occupation. In ruling that the proposed position was not a specialty occupation, the director found that the duties of the proposed position were essentially those of a general and operations manager.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

On appeal, counsel contends that the proposed position qualifies as a specialty occupation. Counsel contends that the proposed position is similar to an industrial engineer as that position is described in the *Handbook*, and that the petitioner requires an individual with a degree in industrial engineering. Counsel also offers additional information regarding the petitioner and the proposed position, as well as letters from principals at two of the elementary schools in which the beneficiary will spend time.

The 2006-2007 edition of the *Handbook* offers the following information regarding the duties and responsibilities of industrial engineers:

Industrial engineers determine the most effective ways to use the basic factors of production—people, machines, materials, information, and energy—to make a product or to provide a service. They are mostly concerned with increasing productivity through the management of people, methods of business organization, and technology. To solve

organizational, production, and related problems efficiently, industrial engineers carefully study the product requirements, use mathematical methods to meet those requirements, and design manufacturing and information systems. They develop management control systems to aid in financial planning and cost analysis, and design production planning and control systems to coordinate activities and ensure product quality. They also design or improve systems for the physical distribution of goods and services, as well as determine the most efficient plant locations. Industrial engineers develop wage and salary administration systems and job evaluation programs. Many industrial engineers move into management positions because the work is closely related to the work of managers.

The AAO disagrees with the director's assessment that the proposed position resembles that of a general and operations manager. The totality of the evidence in this proceeding, including detailed information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational structure, establishes that the duties of the proposed position are substantially similar to those of an industrial engineer as described in the *Handbook*. According to the *Handbook*, such a position requires a bachelor's degree in industrial engineering. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

According to an evaluation contained in the record, the beneficiary possesses the equivalent of a bachelor's degree in industrial engineering. Therefore, he is qualified to perform the duties of this specialty occupation.

The petitioner has established that the proposed position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the appeal will be sustained and the petition approved.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.