U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

D2

FILE: WAC 03 116 52842 Office: CALIFORNIA SERVICE CENTER Date: MAR 28 2006

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.

for Michael T. Kelly
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 sustained. The petition will be approved.

The petitioner is a custom formulator and compounder that seeks to employ the beneficiary as a chemical engineer. The petitioner, therefore, endeavors to extend the beneficiary's classification 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 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 additional evidence (RFE); (3) the petitioner's RFE response; (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.

The petitioner, a custom formulator and compounder with 21 employees, was established in 1986 and has a gross annual income of three million dollars. It proposes to hire the beneficiary as a chemical engineer. In its February 18, 2003 letter of support, the petitioner stated that the beneficiary would be responsible for conducting laboratory analysis of all in-process and finished products. She would also check the stability of testing of newly-developed products; perform tests throughout all stages of production to determine the degrees of control over variables, such as density and composition; maintain and ensure that all finished products pass standards requirements; ensure product quality based on legally accepted standards and customer requirements; develop personal care products based on customer requirements and specifications; reformulate and improve selected company products; and prepare estimates of production costs and production progress reports for the petitioner's management. She would also be involved in the aspects of chemical production, research, and design, focusing on the production, development, and improvement of existing and new products. She will utilize her knowledge of chemical processes to enhance and maximize production, which would include establishing and maintaining standards of raw materials, troubleshooting in-process products, and investigate any problems affecting product quality.

The petitioner noted that the most important duty would be for the beneficiary to implement a chemical engineering process and guidelines for the process. This process and its guidelines would be available to chemical engineers who succeed the beneficiary.

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 is not a specialty occupation, the director found that the duties of the proposed position were essentially those of a chemical engineering technician.

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.

The *Handbook* states the following with regard to the employment of chemical engineers:

> Chemical engineers build a bridge between science and manufacturing, applying the principles of chemistry and engineering to solve problems involving the production or use of chemicals. They design equipment and develop processes for large-scale chemical manufacturing, plan and test methods of manufacturing treatments and treating

> byproducts, and supervise production. Chemical engineers also work in a variety of manufacturing industries other than chemical engineering, such as those producing electronics, photographic equipment, clothing, and pulp and paper. They also work in the healthcare, biotechnology, and business services industries.
>
> **The knowledge and duties of chemical engineers overlap many fields.** Chemical engineers apply principles chemistry, physics, mathematics, and mechanical and electrical engineering. . . They frequently specialize in a particular chemical process such as oxidation or polymerization. Others specialize in a particular field, such as materials science, or the development of specific products such as fertilizers and pesticides, automotive plastics, or chlorine bleach. They must be aware of all aspects of chemicals manufacturing and how it affects the environment, the safety of workers, and customers.

The *Handbook* states the following with regard to the employment of engineering technicians:

> Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists . . . .
>
> *Chemical engineering technicians* usually are employed in industries producing pharmaceuticals, chemicals, and petroleum products, among others. They work in laboratories as well as processing plants. They help to develop new chemical products and processes, test processing equipment and instrumentation, gather data, and monitor quality.

The AAO finds that the proposed position is that of a chemical engineer. The *Handbook* notes that chemical engineers design equipment and develop processes for large-scale chemical manufacturing, plan and test methods of manufacturing treatments and treating byproducts, and supervise production. Here, the beneficiary will implement and develop a guideline for the petitioner's chemical engineering processing. She will also be involved in the aspects of chemical production, research, and design, focusing on the production, development, and improvement of existing and new products. She will also conduct tests to determine whether lower-level employees ("process operators," who are in essence chemical engineering technicians) are accurately following the procedures she develops.

The totality of 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 proposed position is that of chemical engineer as that position is described in the *Handbook*. According to the *Handbook*, such a position normally requires a bachelor's degree in engineering. Therefore, the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The record reflects that the beneficiary earned a bachelor's degree in chemical engineering from the Mapua Institute of Technology, in the Philippines, in 1986. According to an evaluation contained in the record, this

degree is equivalent to a bachelor's degree in chemical engineering from an accredited university in the United States. Therefore, she 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 will be 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.