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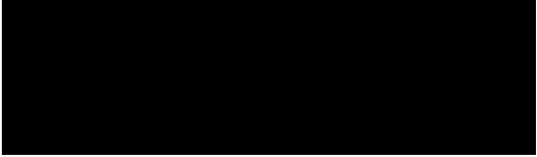
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FILE: WAC 05 218 50244 Office: CALIFORNIA SERVICE CENTER Date: JUN 20 2007

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
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 manufacturer of plastic bottles that seeks to employ the beneficiary as a production manager. The petitioner 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 does not qualify as a specialty occupation. On appeal the petitioner submits a brief indicating that the offered position is a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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 are 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) the 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) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a production manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Draft new bottle designs per customer request using computer-assisted design software;
- Draft pre-mold adapter designs using computer-assisted design software for use in adapting existing pre-form molds for production of new bottle designs – as part of the design process, new prototype bottles are examined and tested for conformance to engineering requirements;
- Monitor all products for conformance to engineering standards for size, density, color and durability under various conditions of pressure and temperature;
- Examine sample bottles and test them for conformance to engineering requirements on a daily basis;
- Make mechanical and product formula modifications as needed to produce required product standards;
- Specify mold machine settings of time, pressure and temperature for each type of bottle produced using knowledge of principles of mechanical engineering to obtain the desired product specifications;
- Plan and coordinate production of 25 or more types of bottles, including reviewing production orders to make decisions concerning inventory requirements, staffing requirements and work schedules considering cost and time constraints requiring knowledge of raw materials, production processes, and costs to maximize profits;
- Develop and implement procedures and schedules for facility and machine maintenance, including research and selection of replacement machines;

- Investigate mold machine mechanical, electrical and computer failures to diagnose faulty operation, and to make recommendations for repairs or alternate equipment design;
- Train and supervise first-line production supervisors who oversee the mold machine operation from loading of plastic material to removal and storage of the finished bottles. The supervisors must be trained in reading all monitors and gauges which document the molding process and in making necessary and timely adjustments as needed during the molding process; and
- Hire and evaluate production supervisors and staff.

The petitioner requires a minimum of a bachelor's degree in mechanical engineering for entry into the proffered position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of a mechanical engineer with additional duties normally performed by industrial production managers. The *Handbook* notes that mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work in many industries and may specialize in energy systems, applied mechanics, automotive design, manufacturing, materials, plant engineering and maintenance, pressure vessels and piping, heating, refrigeration, and air-conditioning systems. They may work in production operations in manufacturing or agriculture, maintenance, or technical sales, and many are administrators or managers. In this instance the beneficiary will be responsible for all mechanical engineering issues involved in a production facility. The duties to be performed are complex and include duties that would normally be performed by an engineer. The *Handbook* states that a bachelor's degree is required for almost all entry-level engineering positions. The proffered position is, therefore, a specialty occupation as it meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The director did not comment on the beneficiary's qualifications to perform the duties of the proffered position as the petition was denied on another ground. The record is sufficient, however, for the AAO to make that determination. The beneficiary's foreign education has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in mechanical engineering from an accredited institution of higher learning in the United States. As such, the beneficiary is qualified to perform the duties of the offered position as he satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As always, 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 and the petition shall accordingly be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.