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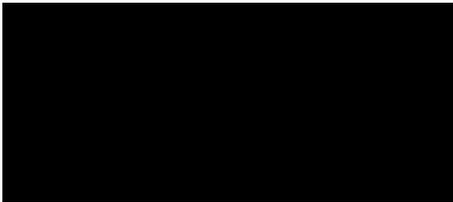
FILE: SRC 04 028 50005 Office: TEXAS SERVICE CENTER Date: **AUG 31 2005**

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 Texas 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 hotel and seeks to hire the beneficiary as a chief engineer. The director denied the petition based on her 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 and previously submitted documentation. 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 a chief engineer. Evidence of the beneficiary’s duties includes: the Form I-129; a November 4, 2003 letter of support from the petitioner; and counsel’s February 2, 2004 response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail being responsible for maintenance, repairs, and design and developing preventative measures and adaptations for general electronic equipment, industrial washing machines, PTAC air conditioning units, bulk air handlers air conditioners, air extraction units, hot water boilers, refrigeration units, pool equipment, hot spas, electronic safes in all rooms, televisions, elevators, security systems including fire alarms and surveillance, setup of necessary electronic equipment such as computers and communication systems in the rooms and offices; in addition, responsible for constructions and installations to existing buildings. The petitioner indicated that the position required a bachelor’s degree in mechanical engineering or electronic[s] or its equivalent.

The director requested the petitioner to submit additional evidence that the proffered position meets one of the above listed criteria to qualify as a specialty occupation. In response, counsel for the petitioner submitted an opinion letter from a professor and chairman at Morehouse College. The professor indicated that he reviewed a copy of the petition support letter and stated “[b]ased on my several years of teaching experience as a Professor and Consultant in marketing, market research, hiring and evaluating professionals, I agree with the contents of the letter by the Petitioner in that the position requires a person to have highly specialized skills to perform the job duties.” The professor further opined “[f]or the chief engineer position, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered.”

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 a handyman or technician. 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 never considered the opinion letter submitted by the petitioner and did not give adequate consideration to the author’s conclusion. Counsel notes that the director relied on the *Handbook*. Counsel contends that the director “did not inquire from the petitioner, or examine the issue of the amount of time engaged in the supervisory activities to determine if the majority of the beneficiary’s time was

spent in supervisory activities.” Counsel contends that the instant case should be returned to the director for such an examination. The AAO notes that it can review appeals on a de novo basis. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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*.¹ Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of a maintenance and repair worker in the *Handbook*. The *Handbook* describes maintenance and repair workers in the following way:

Most craft workers specialize in one kind of work, such as plumbing or carpentry. General maintenance and repair workers, however, have skills in many different crafts. They repair and maintain machines, mechanical equipment, and buildings and work on plumbing, electrical, and air-conditioning and heating systems. They build partitions; make plaster or drywall repairs, and fix or paint roofs, windows, doors, floors, woodwork, and other parts of building structures. They also maintain and repair specialized equipment and machinery found in cafeterias, laundries, hospitals, stores, offices, and factories. Typical duties include troubleshooting and fixing faulty electrical switches, repairing air-conditioning motors, and unclogging drains. New buildings sometimes have computer-controlled systems, requiring workers to acquire basic computer skills. For example, new air-conditioning systems often can be controlled from a central computer terminal. In addition, light sensors can be electronically controlled to turn off lights automatically after a set amount of time.

General maintenance and repair workers inspect and diagnose problems and determine the best way to correct them, frequently checking blueprints, repair manuals, and parts catalogs. They obtain supplies and repair parts from distributors or storerooms. Using common hand and power tools such as screwdrivers, saws, drills, wrenches, and hammers, as well as specialized equipment and electronic testing devices, these workers replace or fix worn or broken parts, where necessary, or make adjustments to correct malfunctioning equipment and machines.

General maintenance and repair workers also perform routine preventive maintenance and ensure that machines continue to run smoothly, building systems operate efficiently, and the physical condition of buildings does not deteriorate. Following a checklist, they may inspect drives, motors, and belts, check fluid levels, replace filters, and perform other maintenance actions. Maintenance and repair workers keep records of their work.

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

Graduation from high school is preferred for entry into this occupation. High school courses in mechanical drawing, electricity, woodworking, blueprint reading, science, mathematics, and computers are useful. Mechanical aptitude, the ability to use shop mathematics, and manual dexterity are important. Good health is necessary because the job involves much

¹ The AAO’s comments are based upon the 2004-2005 edition of the *Handbook*.

walking, standing, reaching, and heavy lifting. Difficult jobs require problem-solving ability, and many positions require the ability to work without direct supervision.

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 chief 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.

As noted above, the petitioner submitted an opinion letter from the professor and department chair of Morehouse University who indicated that his evaluation was based on a review of the letter of support from the petitioner. The professor concluded for "the chief engineer position, a baccalaureate degree in a specific field of study is a standard minimum requirement for the job offered. Since the proposed duties are highly specialized and extremely complex in nature, it is necessary to delegate the aforementioned job duties to someone who has at least completed a bachelor's degree in mechanical engineering technology, a closely related field or possess the equivalent in professional experience." The author contended he was qualified to provide an expert opinion based on his experience and his several years of teaching in marketing, market research, hiring and evaluating professionals. The author did not provide evidence that his professional experience is in any way related to the field of the proffered position. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Again, the evidentiary record depicts the duties of the proffered position as a maintenance and repair 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. 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 duties parallel those in the *Handbook* for a maintenance and repair worker, an occupation that does not require a specific baccalaureate 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.