



U.S. Citizenship
and Immigration
Services

Identifying information related to
prevent... grant
invasion of personal privacy

ORIGINAL COPY



DA
2005

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 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 provides health care services through 24 facilities located in Southern California and Arizona. In order to employ the beneficiary as a maintenance engineer, 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 on the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. A critical part of the director's decision was his determination that the duties of the proffered position "reflect the duties of Industrial Machinery Installation, Repair, and Maintenance Workers as listed in" the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The *Handbook* indicates that employers do not normally require that these workers hold at least a bachelor's degree in order to qualify for entry-level positions.

On appeal, the petitioner contends that, contrary to the director's assessment, the evidence of record establishes that the proffered position is that of a mechanical engineer. The petitioner asserts that its description of the position "indicates substantial design and supervisory duties[,] including evaluation and recommendation for design modifications." According to the petitioner, such duties exceed those of a maintenance worker and comport with the mechanical engineer occupation as described in the *Handbook* and the DOL's *Dictionary of Occupational Titles (DOT)*. As underscoring "the need for a professional," the petitioner states that it "manages over 25 facilities throughout Southern California and Arizona," and that the "functioning of the electrical equipment in a health care facility" is of a "critical nature."

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and petitioner's letter dated December 16, 2003.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

According to the June 12, 2002 letter of support that the petitioner submitted with the Form I-129, its maintenance engineer: coordinates the operation, maintenance, and repair activities of each of the petitioner’s facilities, in order to obtain optimum utilization of machines and equipment; evaluates field installations and recommends design modifications to eliminate machine or system malfunctions; plans, coordinates and directs the use of each facility’s maintenance personnel; and establishes standards and policies for facilities’

modifications, operating procedures, inspection, and maintenance, according to engineering principles and safety regulations.

The petitioner's May 6, 2002 request for employees' assistance in locating candidates for positions at its Torrance, California job site stated the following requirements for Maintenance Engineer: "2 years experience in the job offered or Bachelor Degree in Mechanical Engineering in lieu of experience."

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

As the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, it consulted the 2004-2005 edition for information relevant to the proffered position as described in the record of proceeding.¹ The AAO found that the director was incorrect in identifying the proffered position with the *Handbook's* occupational category of Industrial Machinery Installation, Repair, and Maintenance Workers. To the extent it is described in the record, the proffered position substantially comports with the Maintenance and Repair Workers occupation, as described at pages 560-562 of the *Handbook*. The nature of the work upon which the beneficiary would focus does not exceed the following description from pages 560-561 of the *Handbook*:

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.

¹ The AAO's references are to the 2004-2005 edition of the *Handbook*.

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.

Employees in small establishments, where they are often the only maintenance worker, make all repairs, except for very large or difficult jobs. In larger establishments, their duties may be limited to the general maintenance of everything in a workshop or a particular area.

Of special note is the fact that the description above includes the maintenance and repair of specialized equipment found in hospitals.

The petitioner's generalized assertion that its job description "indicates substantial design and supervisory duties[,] including evaluation and recommendation for design modifications" is not probative of the proffered position being that of a mechanical engineer or any other occupation that requires at least a baccalaureate degree, or its equivalent, in a specific specialty. The maintenance and repair workers occupation also encompasses the supervisory duties of the proffered position, as the *Handbook* notes, at page 561, that many general maintenance and repair workers in large organizations advance to maintenance supervisor. As the record contains no examples of or specific information about the type of design-modification evaluations and recommendations modifications that would be made, the petitioner has not demonstrated that this function requires a specialty degree.

As described in the record, the proffered position is that of a supervisory maintenance worker, and the "Training, Other Qualifications, and Advancement" section at page 561 of the *Handbook* indicates that this position does not require at least a bachelor's degree, or its equivalent, in a specific specialty. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). The record of proceeding contains none of these factors or any other evidence that establishes a common practice of recruiting and hiring only persons with at least a bachelor's degree in a specific specialty. The evidence of record is counter to this criterion, as the petitioner's May 6, 2002 request for recruiting assistance stated that the petitioner would accept "2 years experience in the job offered."

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), because the petitioner has not demonstrated that this particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Such complexity or uniqueness is not evident in the petitioner's description of the position, and it is not demonstrated in any other evidence of record.

The petitioner presented no evidence relevant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner's personal estimate of specialization and complexity is not substantiated by evidence in the record. As already discussed, to the extent that they are described in the record, the duties are encompassed by an occupation for which the *Handbook* indicates that there is no need for at least a bachelor's degree in a specific specialty.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.