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JUN 21 2005

[Redacted]

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:  
[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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen. The motion is granted, and the prior decision of the AAO is withdrawn. Upon consideration of the appeal, the appeal will be dismissed, and the petition will be denied.

The petitioner is a corporation engaged in the textile converting business, which includes the knitting, dyeing, importing, and wholesale distribution of synthetic knit goods to garment manufacturers in the United States and overseas. In order to employ the beneficiary as a mechanical 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 as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel subsequently filed a timely Form I-290B, but it did not identify specifically any erroneous conclusion of law or statement by the director. The AAO summarily dismissed the appeal because it had not received the brief and/or evidence that the Form I-290B stated would follow in 30 days. On motion, counsel has overcome the basis of the summary dismissal, by demonstrating that, prior to the AAO decision, he had filed the material specifying the grounds of the appeal. Accordingly, the AAO's previous decision will be withdrawn, and the AAO will consider the appeal.

On appeal, counsel asserts that, contrary to the director's decision, "[a] review of the evidence presented clearly demonstrates that the position offered qualified as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)."

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 counsel's brief, dated November 26, 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.

At the outset, the AAO finds that, while counsel generally asserts that the director erred in not finding a specialty occupation under all of the regulatory criteria for finding a specialty occupation, counsel only specifically addressed one criterion, namely, that of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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. Accordingly, the AAO only

considers counsel's argument that the director erred in finding that the petitioner had not established that it was proffering a mechanical engineer position.<sup>1</sup> To have an issue considered on appeal, it is incumbent upon the petitioner to identify specifically any erroneous conclusion of law or statement of fact for the appeal. *See*, 8 C.F.R. § 103.3(a)(1)(v).

On appeal, counsel does not dispute the accuracy of the following description of the proposed duties taken from the petitioner's response to the RFE:

The beneficiary will spend approximately 40% of his time, or 16 hours per week, designing and refitting tools, engines, and textile knitting and dyeing machinery for [the petitioner's] production needs. In our industry, these skills are critical, as [the petitioner] remains competitive through our ability to adapt to our client's [sic] rapidly changing demands. The beneficiary will spend approximately 30% of his time, or 12 hours per week, overseeing the installation, maintenance, and repair of [the petitioner's] high-tech dyeing and knitting machines and all job order retooling projects. The beneficiary will spend an additional 20% of his time, or 8 hours per week, interfacing with [the petitioner's] management and outside textile machinery manufacturing engineers to promote improvement of production, efficiency, and quality through modification and testing of production machinery and processes. The beneficiary will spend the remainder of his time, or approximately 4 hours per week[,] analyzing fabric construction and dye composition, and affecting customer needs for prospective and pending textile production orders, which includes making determinations as to the necessary chemicals and finishing processes available in the dyehouses to achieve the desired look, feel, drape, width, yield, stretch, and bounce of finished products.

According to counsel, the director determined that the proposed duties were divided between those of an engineer and an engineering technician. Counsel therefore asserts that the director erred by basing his denial of the petition on the fallacious proposition that, to qualify as a mechanical engineer position, every duty of that position must require the educational credentials of a mechanical engineer. In counsel's words:

Merely because [the] beneficiary may be performing certain duties that overlap with that of an engineer technician does not preclude the fact that his primary duties are those of a mechanical engineer. [Brief, at page 3.]

Counsel misinterprets the director's decision. The director acknowledged that the petitioner described some general duties that generally comport with a mechanical engineering position; but he also determined that the evidence of record did not establish that those generally described duties would translate into actual performance that requires a mechanical engineer. Hence, the director's statements that it is "insufficient for a petitioner to merely state that he will employ an individual to perform duties that are characteristic of those found in a particular occupation," and that "there must be a reasonable and credible offer of employment that is consistent with the needs of the petitioning organization." For the reasons discussed below, the AAO finds that the evidence

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<sup>1</sup> The director did not question that a mechanical engineer position is a specialty occupation.

of record does not establish that the beneficiary would be working as an engineer, or in any occupation that requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The petitioner provides no specific information about "the tools, engines, and textile knitting and dyeing machinery" that it asserts the beneficiary will design and retool, but only asserts that they include "high-tech dyeing and knitting machines." The petitioner provides no information or explanation from which CIS can reasonably determine that the beneficiary's design, retooling, maintenance, and supervisory duties in those areas require at least a bachelor's degree, or its equivalent, in a specific specialty. As no specific information is provided about "interfacing with [the petitioner's] management and outside textile machinery manufacturing engineers," there is no basis to determine that this function requires a mechanical or any other type of engineer. Finally, no information is provided about how the generally described analysis of fabric construction and dye composition generates the need for an engineering degree.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The evidence of record has not established the petitioner's need for the skills, competencies, and knowledge achieved by at least a bachelor's degree in engineering, which is the defining characteristic of all of the engineer occupations described in the *Handbook*.

The record's job vacancy advertisements from other employers have no weight. The record does not establish that the advertised positions and their specific, day-to-day performance requirements are substantially similar to the proffered position. Furthermore, the advertisements related to the textile industry are too few and limited in time to be evidence of a routine recruiting and hiring standard for the industry or even the particular advertisers.

It is also noted that, although the petitioner has been in existence since 1987 and has not indicated a recent change in the nature or technical requirements of its operations, the petitioner's organizational chart shows no slot for a mechanical engineer, and that the two-page "Duties & Responsibilities Review" of the petitioner's departments reveals no function that is readily identifiable with a mechanical engineer position. This latter document's only reference to machinery is in the comment that the Product and Development and Engineering Department "[a]ssists in the set-up and maintenance of knitting machines to conform to order specs," and no information is provided to demonstrate that this function requires at least a degree in engineering or any other specific specialty. Yet the petitioner asserts that its business requires a mechanical engineer. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As counsel fails to establish that the director's decision was erroneous in law or fact, 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 AAO decision of July 1, 2004 is withdrawn. The appeal is dismissed. The petition is denied.