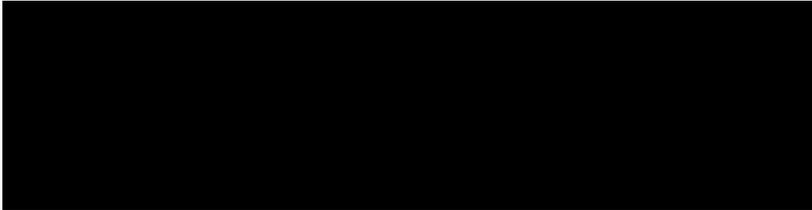




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



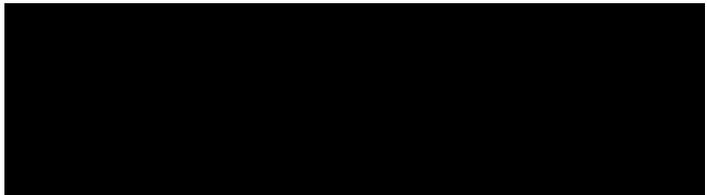
DZ

FILE: WAC 03 174 52195 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 2005

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.

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 manufacturer of forged and spun aluminum products that seeks to employ the beneficiary as a manufacturing 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 proffered position.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a manufacturing engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 1, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: determining the most optimal methods to use the basic factors of manufacturing, personnel, machines, materials and information; performing gap analysis to evaluate and improve manufacturing methods utilizing knowledge of product design, materials and parts, fabrication processes, tooling and production equipment capabilities, assembly methods and quality control standards; solving organizational, production and related problems most efficiently by studying the product and its requirements, design manufacturing processes, and information systems using mathematical analysis methods, such as operations research and engineering optimization; identifying the audit process or manner in which continuous compliance of new processes can be assured; identifying training, resources, timing issues, concerns and risks of new processes; developing machine control systems and defining interfaces to aid in the smooth flow of manufacturing data from the shop floor to management; defining and employing standard networking and communication protocols to aid information exchange across the company; employing effective document control systems to all related documents from customer requirements through product shipment; defining network storage requirements and necessary controls for manufacturing related data; performing cost justification with vendors of data storage and management equipment before implementing best solutions; identifying key metrics and parameters to achieve proactive maintenance; and identifying maintenance trends and establishing trigger points that kick off work orders for planned maintenance. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in engineering.

The director found that the proffered position was not a specialty occupation because the job is most like a computer control programmer and operator. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the proffered position is sufficiently complex to establish that it is a specialty occupation. The petitioner also states that the industry standard for a manufacturing engineer is a bachelor's degree in engineering.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with the director that the duties of the proffered position are similar to those of a computer control programmer and operator. The duties of the position are most like an industrial engineer. The petitioner is a manufacturer of forged and spun aluminum products employing 130 people and with a gross annual income of \$20 million and seeks to employ the beneficiary in an engineering capacity to assist in manufacturing. The *Handbook* states that a bachelor's degree in engineering is required for almost all entry-level engineering jobs.

Therefore, the evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The beneficiary has a master's degree in industrial engineering from a U.S. university, indicating that he is qualified for this specialty occupation.

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. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The petition is approved.