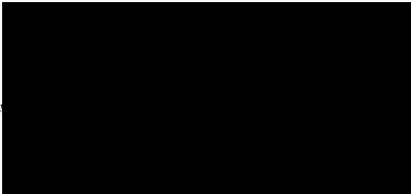


**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



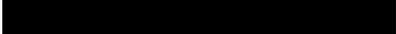
**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

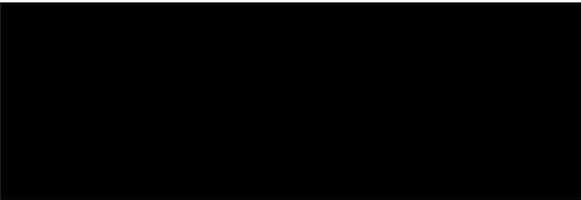


*Dz*

FILE: WAC 03 076 55697 Office: CALIFORNIA SERVICE CENTER Date: **NOV 15 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*

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 The director's decision is withdrawn and the matter remanded for entry of a new decision.

The petitioner provides laboratory testing instruments and sales and service. It seeks to employ the beneficiary as an electrical engineer. The petitioner, therefore, 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 and additional evidence.

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 an electrical engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary's proposed duties are as follows:

[R]esearch and testing electrical components, equipment, and systems, applying principles and techniques of electrical engineering. [The beneficiary] will plan the sequence of testing and calibration program for the equipment according to schematics, technical manual, and other specifications. [The beneficiary] will write performance requirements and develop maintenance schedules. [The beneficiary] will also solve operating problems. [The beneficiary] will also be responsible for the on-site service for uWave and all CEM microwave analyzers.

The petitioner's response to the request for evidence elaborated on the proposed duties. The petitioner requires at least a baccalaureate degree in electrical engineering for the proposed position.

The director stated that the proposed position resembles an engineering technician as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a baccalaureate degree. The director found that the majority of the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond that normally encountered in many of the occupational fields that are included in the petitioner's position description. According to the director, the petitioner did not submit evidence showing that it normally requires a baccalaureate degree for the position; or evidence such as job postings to demonstrate that a baccalaureate degree is a requirement in the industry.

On appeal, counsel states that the proposed position is similar to an electrical engineer and that the *Handbook* shows this occupation requires a baccalaureate degree in engineering. Counsel refers to previously submitted job postings to substantiate that the industry standard is to require a baccalaureate degree in engineering for an electrical engineer; and counsel indicates that *Matter of General Atomic Company*, 17 I&N Dec. 532 (Comm. 1980) suggests that a petitioner need not establish an educational requirement for a particular size or business or industry. Counsel states that the beneficiary will "develop strategies for product testing and design new products, solve operating problems and determine performance requirements"; and emphasizes that the beneficiary will be charged with "analyzing product design to maximize utility and efficiency." Counsel distinguishes the characteristics of an electrical engineer from those of an engineering technician. The beneficiary will do more than "assist" in product design, development, or production, counsel asserts, as the beneficiary will "establish testing standards and plan the sequence of testing programs," will alter the product design, correcting any product defects and evaluating testing strategies; and will research and test electrical components, systems, and equipment to assure product and sample integrity. "Rather than merely repairing or testing a product, the [b]eneficiary will evaluate the overall design, electrical components and

technical specifications, counsel asserts. Counsel states that an engineering technician would produce an inferior work product, and would not provide adequate consultation to clients. Counsel states that the fat analyzer developed by the petitioner uses advanced algorithms and processes; that mathematical concepts and cutting edge technologies requires an electrical engineer to evaluate and develop algorithms and test product efficacy; and that the services of an electrical engineering reduces liability. An engineering technician, counsel states, cannot work independently, although this is expected of the beneficiary. Counsel states that some of the beneficiary's duties will overlap with those of an electrical engineer; but that the primary duties are those of an electrical engineer.

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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The evidence in the record and the petitioner's website establish that the petitioning entity designs equipment to analyze the fat content and moisture in pork and ground beef. The record contains an article describing a device, the HFT 2000, which was invented by the vice president of the petitioning entity to test the fat content of ground beef. The petitioner's website reflects that it has also invented other products: the DSC HFT 2000F Ground Beef/Pork Fat Tester, the DSC HFT 2000m Moisture Balance Analyzer, and the DSC HFT-2000f Fat Tester for New Zealand. The website also has a news article, dated July 2, 2004, that states:

The patented HFT-2000 uses microprocessor-based, chemical-free technology to yield a digital readout of fat content in minutes at the touch of a button. Traditional fat testers, still used by thousands of supermarkets and municipal grocery meat department inspectors across the nation, are inaccurate when testing ground beef leaner than 20 percent fat. While traditional fat testers boast an accuracy of  $\pm 2$  percent, the HFT-2000 accurately measures fat content to within 0.5 percent and can measure samples with as low as 1 percent fat content.

. . .

The "plug and weigh" 9-pound HFT-2000 is easy to use and requires minimal user training. Its accurate fat content analysis is based on the instrument's ability to measure the moisture content of a sample over a range of temperatures. Simply place a palm-sized amount of beef in the instrument's weighing chamber, close the lid and select the appropriate program from the front panel. The HFT-2000 does the remainder of the work and automatically shuts off when the test is complete (10 to 15 minutes). The results are displayed on the digital screen. Easy cleanup is also key; users simply discard the disposable filter pads and aluminum tray.

The AAO concludes that the proposed position, in the context of the evidence in the record and the petitioner's website, would require a baccalaureate degree in electrical engineering.

The petitioner may not be approved, however, as there is insufficient evidence to establish that the beneficiary is qualified to perform the duties of the specialty occupation, which requires a baccalaureate degree in electrical engineering. The record contains a copy of the beneficiary's transcript and bachelor's degree in electrical engineering from a Philippine institution; however, no evidence in the record establishes that this is equivalent to a U.S. baccalaureate degree in electrical engineering from an accredited college or university. The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the proposed duties, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's June 10, 2004 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.