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FILE: WAC 04 256 50682 Office: CALIFORNIA SERVICE CENTER Date: **JUN 26 2006**

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:

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, Chief  
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 engages in the design, manufacture, import, and wholesale of jewelry, aromatherapy products, and fashion accessories. It seeks to employ the beneficiary as an industrial 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, former counsel submits a brief.<sup>1</sup>

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.

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<sup>1</sup> Former counsel, [REDACTED] is no longer active with the state bar of California. All representations will be considered. However, former counsel will not receive notice of these proceedings.

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

The petitioner is seeking the beneficiary's services as an industrial 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 would perform duties that entail:

- **Strategic Analysis and Process Development**  
Process development, machine validation, creating maintenance procedures, optimizing equipment efficiency and reliability, troubleshooting production problems, process layout, work flow, improving process control, cost and cycle time reduction, and production flow improvement; develop and implement engineering improvement projects including performing engineering studies, conducting analysis and design improvements, implementing equipment improvement programs to minimize downtime and increase efficiency, utilizing lean manufacturing methods and other lean tools to drive process improvement; review, identify, and solve manufacturing operating performance problems and implement cost savings projects to streamline operation procedures for maximum efficiency; analyze work methods, manufacturing processes and non-productive materials to recommend changes that will reduce operational costs; conduct capacity analyses to provide recommendations for corrective actions to improve line balancing to eliminate production bottlenecks, reduce scrap, waste, and machine downtime and ultimately increase productivity.
- **Planning and Procurement of Equipment Layout and Analysis of Workflow**  
Modify existing equipment or develop new equipment to improve product quality, performance, and reliability, purchasing, installation, and debugging to ensure continued plant production capabilities; oversee procurement and/or design for additional tools or fixtures to enhance efficiency in production; determine the need of additional production tooling, material handling equipment for specific use and assist in the selection process; develop and maintain workflow and equipment layouts to optimize ergonomics and material flow, and define specification for purchasing of assembly and warehouse equipment; develop, coordinate, and monitor short and long-term volume forecasts, manpower forecasts, facility, and equipment requirements and operating plans for the facility, balancing resources to attain service and productivity goals.

The petitioner seeks to employ the beneficiary who holds the educational equivalent of a baccalaureate degree in industrial engineering from an accredited college or university in the United States.

The director stated that the proposed position resembles an industrial 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 bachelor's degree in a specific specialty.

On appeal, former counsel states that the proposed position is similar to an industrial engineer as that occupation is depicted in the *Handbook*. Former counsel asserts that the proposed duties require the knowledge associated with a bachelor's degree as they involve production planning, systems engineering, policy formulation, management information systems, cost evaluation method, supply chain management, and time and motion study. Former counsel refers to Internet job postings and letters from other companies to establish the offered position as a specialty occupation. Former counsel states that the petitioner operates under three businesses, and that it has expansion plans and programs.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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 2006-2007 edition of 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Former counsel's assertion that the proposed position is analogous to an industrial engineer is not persuasive. The record of proceeding describes the proposed duties in very general terms that do not relate the duties to specifically described tasks that would demonstrate that the proposed duties require baccalaureate-level knowledge in industrial engineering or a related discipline. For example, the record of evidence does not describe in any detail the machinery and equipment, tools and fixtures, processes and procedures, work flow, or existing problems that the beneficiary will be involved with. The petitioner submitted no evidence elaborating on the proposed duties. A petitioner must do more than submit a generalized job description and assert that the position requires a degree in a specific specialty. It must submit evidence supporting its contentions. The AAO finds that the evidence of record provides no factual basis to conclude that the offered position is one that normally would require a bachelor's degree or its equivalent in business. The record contains flyers and advertisements relating to the petitioner's products such as rings, slippers, and herb packs. The petitioner does not explain how this evidence demonstrates that the offered position would require a bachelor's degree in industrial engineering. The petitioner does not submit evidence of its expansion plans. The financial records convey the petitioner's financial status; however, this does not relate to the nature of the

proposed duties. There is no documentary evidence of the petitioner's equipment, tools, machinery, or manufacturing procedures or processes. The submitted lease agreements did not indicate that the petitioner uses office space for manufacturing. The organizational chart shows three employees designated as production staff; nevertheless, there is no description of what is produced. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Consequently, the petitioner failed to demonstrate a factual basis on which to establish that the offered position is one that normally would require at least a bachelor's degree or its equivalent in industrial engineering.

The AAO's conclusion, from the various evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submits Internet job postings and letters from companies. The job postings from Tiffany & Company, L'Oreal USA, and Estee Lauder are not persuasive in that they represent companies that differ significantly in size from the petitioner, a company with nine employees. Thus, the three companies are not similar to the petitioner. The record contains certificates of hiring requirements relating to MB Jewelry Design & Mfg. Ltd.; Masterpiece Jewelry & Watches, Inc.; Sonya Dakar Skincare, Inc.; and Philip Wolman and Company. Each of the certificates essentially states that "due to the complex nature of our firm, we only employ qualified individuals in light of an open position." For positions in areas such as marketing, management, finance, engineering, accounting, and information systems the signatories of the certificates state that their firm's minimum hiring requirement is a bachelor's degree in the related field and professional experience. The AAO notes that none of the signatories state that their firm has previously employed or is presently employing the in-house services of an industrial engineer, and that the industrial engineer performed duties which parallel to the proposed position. Moreover, letters from four companies is not sufficiently representative of the hiring requirements of the petitioner's industry. Based on the evidence in the record, the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) has not been established by the petitioner.

To satisfy the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Given the lack of specificity in the beneficiary's job description, the petitioner fails to demonstrate the complexity or uniqueness of the proposed position. Moreover, the petitioner fails to adequately explain the relevance of the evidence of record, such as the organizational chart, company advertisements, financial records, and lease agreements, and how it demonstrates the complexity or uniqueness of the proposed position. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

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. By describing the duties in very general terms, the petitioner fails to demonstrate that the nature of those duties is so specialized and complex, requiring knowledge that is usually associated with the attainment of a baccalaureate degree. In addition, the petitioner does not explain how the evidence of record - the organizational chart, company advertisements, financial records, and lease agreements - establishes that the proposed duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, 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 on this ground.

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.