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FILE: WAC 05 003 53017 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California Service Center 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 states that it is in the business of selling HVAC (heating, ventilation and air conditioning) equipment to contractors and end-users. The petitioner seeks to employ the beneficiary as a HVAC applications 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position:

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner is seeking the beneficiary’s services as a HVAC applications engineer. Evidence of the beneficiary’s duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and counsel’s response to the director’s request for evidence. According to the initial letter of support, the beneficiary would perform duties that entail: working with a variety of different projects and customers in the HVAC automation field; performing Lonworks and BACNet based control systems engineering and customer sales support, submittals, construction interface and documentation; and assisting in directing internal resources and subcontractors. The petitioner indicated that the position required at least a bachelor’s degree in civil engineering, mechanical engineering or in a related field. The petitioner submitted information from its internet website which stated that the petitioner provides competitively priced HVAC products to builders, contractors, and end-users with professional service and sales engineering expertise.

The director issued a request for additional evidence. In response, the petitioner provided the following duties of the proffered position:

- Design HVAC control systems per customer requirements: determine system requirements; make calculations and deliver engineering reports by using engineering formula and applying judgment (20% of time);
- Select Airside components for ventilations: requires a thorough understanding of airflow in ducts, fan curves, and duct pressure drop calculations; systems requirements will be determined by applying the above principles, engineering calculations and engineering judgment (25% of time);
- Design automated design tools: develop web-based design tools: general requirements of the tools will be given, and this role requires the selection and validation of engineering calculations and algorithms; the algorithms and detailed instructions for implementation by a software individual will be handed off in a professional manner (25% of time);
- Design new products: develop new products (initially air side); take the concept for a new product from idea to engineering plans and specifications; communicate with corresponding engineering at test facilities. (30% of time).

In his decision, the director noted that he had requested additional evidence and that the petitioner responded to the director's request. The director found that the evidence submitted did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry as a mechanical engineer as it relates to the petitioner's business. The director found that the proffered position does not meet any of the above-mentioned criteria. The director found that an analysis of the proposed duties reveals that the position described by the petitioner reflects the duties of an engineering technician as listed under the title Engineering Technician in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director found the submitted list of duties is generic in nature and provides no further detail as to the unique or complex nature of the proffered position.

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 to the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position is most similar to that of a sales engineer. The 2006-2007 edition of the *Handbook* describes the duties of a sales engineer as:

Many products and services, especially those purchased by large companies and institutions, are highly complex. Sales engineers—who also may be called *manufacturers' agents, sales representatives, or technical sales support workers*—work with the production, engineering, or research and development departments of their companies, or with independent sales firms, to determine how products and services could be designed or modified to suit customers' needs. They also may advise customers on how best to use the products or services provided.

Most sales engineers have a bachelor's degree in engineering, and many have previous work experience in an engineering specialty. Engineers apply the theories and principles of science and mathematics to technical problems. Their work is the link between scientific discoveries and commercial applications. Many sales engineers specialize in an area related to an engineering specialty. For example, sales engineers selling chemical products may have chemical engineering backgrounds, while those selling business software or information systems may have degrees in computer engineering. Information on engineers, including 17 engineering specialties, appears elsewhere in the *Handbook*.

The *Handbook* states that a bachelor's degree in engineering usually is required to become a sales engineer.

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

The record reflects that the beneficiary has the equivalent of a Bachelor of Science in Civil Engineering awarded by a regionally accredited college and university in the United States, 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.