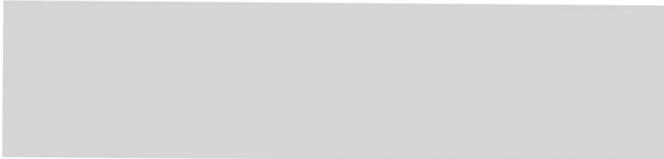


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **APR 28 2015** OFFICE: VERMONT SERVICE CENTER FILE: 
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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a five-employee "Interior Design & Showroom Construction" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time "Mechanical Engineer" position, the petitioner seeks to classify him 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, finding that the petitioner failed to establish that it has specialty occupation work to offer the beneficiary and that the record fails to establish that the proffered position qualifies for classification as a specialty occupation. The director also found that the failure to establish the availability of specialty occupation work casts doubt on the petitioner's intention to engage the beneficiary to work in the United States and the petitioner, therefore, does not qualify as a U.S. employer. On appeal, the petitioner asserted that the director's bases for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Mechanical Engineer position, and that it corresponds to Standard Occupational Classification (SOC) code and title 17-2141, Mechanical Engineers, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor of engineering degree and a master's degree, both in mechanical engineering and both from [REDACTED] University in Korea. An evaluation in the record states that the beneficiary's degrees are equivalent to U.S. bachelor's and master's degrees in engineering.

The petitioner also submitted, *inter alia*: (1) a copy of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to mechanical engineers; (2) a description of the

proffered position; and (3) a letter, dated March 25, 2014, from [REDACTED] signing as the petitioner's president.

The description of the proffered position states the following pertinent to the position's duties:

- Meet and consult with the engineering team of the client firm for technical details of their machine, process, and/or products.
- Instruct and explain the fundamental, technical, and mechanical aspect of the client's request to the appropriate staffs of the company.
- Research, design, evaluate, install, operate, build, test, repair, and maintain showroom and exhibits, including automotive parts, products, equipment, manufacturing systems and processes, and simulating systems thereof.
- Assist the appropriate staffs and designers to come up with the most effective way to exhibit automotive products and processes in a showroom using mechanical engineering technology.
- Assist in developing the structural design of showrooms and simulating systems of exhibits, using drafting tools or computer-assisted design/drafting equipment and software.
- Investigate equipment failures and difficulties to diagnose the faulty operation, and to make recommendation to maintenance crew.
- Read and interpret blueprints, technical drawings, schematics and computer-generated reports.
- Research and analyze customer design proposals, specifications, manuals, and other data to evaluate the feasibility, cost, and maintenance requirements of designs or applications.
- Recommend design modifications to eliminate machine or system malfunctions.
- Develop and test models of alternate designs and processing methods to assess feasibility, operating condition effects, possible new applications and necessity of modification.
- Establish and coordinate the maintenance and safety procedures, service schedule required to maintain showroom and exhibited machine, products, and equipments.

As to the requisite education for the proffered position, that job description states: "BA in mechanical engineering or closely related field."

In the March 25, 2014 letter, [REDACTED] reiterated the duty description previously stated. To explain the complexity of showroom design as performed in the context of the petitioner's business, she stated:

[O]ur company has contracted with [various] companies for their show displays and presentation projects. However, our satisfied current clients and other potential clients who have called on us for their design needs are demanding upgraded level of service to accommodate their project needs in many instances. It is important for most of

these auto manufacturing companies to show the mechanics of their products to their clients, and they want us to build showrooms where their potential clients can see how their auto products or manufacturing technology works.

She also stated: "Such work can only be fulfilled by a qualified Mechanical Engineer with a Bachelor's Degree in mechanical engineering or closely related field."

On May 7, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted, *inter alia*: (1) photographs of showrooms; (2) a letter, dated May 20, 2014, from [REDACTED] and (3) a letter from the "PDSO/President" of [REDACTED] University stating that the beneficiary received a Master of Arts degree in Theological Studies on December 14, 2013.

In the May 20, 2014 letter, [REDACTED] stated that the petitioner designed and built some of the showrooms pictured, and that the others are samples, though not of the petitioner's work. [REDACTED] further stated that the petitioner's clients want showrooms that are "designed to actually show what their products can do" and that "the best part of modern auto showroom[s] [are] the cutaways, such as, engine cutaways, transmission cutaways, and cutaways of entire vehicles, because it is a very effective way that the companies show the potential customers the sheer quantity and quality of their products." Therefore, according to [REDACTED] the petitioner needs a mechanical engineer to "understand technology from our clients and explain it to us in the design process," and to "help us in creating various cutaways for showrooms and other events."

The director denied the petition on June 6, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, the petitioner submitted: (1) three letters from customers; (2) a letter, dated July 8, 2014, from [REDACTED]; and (3) a brief.

One of the customer letters provided states that the petitioner built a showroom for [REDACTED]. The other two companies, [REDACTED] and [REDACTED] state that they have contacted the petitioner to inquire about the petitioner building them showrooms. [REDACTED] letter states that the company inquired about a showroom "with a cutaway of our products to show its mechanical function." The [REDACTED] letter states that the company inquired about "a showroom with the best examples of quality related parts."

In the May 20, 2014 letter, [REDACTED] stated that the evidence presented shows the potential for projects that include automobile cutaways, but that the petitioner does not have contracts for such projects as they are not yet able to hire the beneficiary.

In the brief, the petitioner asserted that the evidence submitted is sufficient to show that the proffered position is a specialty occupation position.

II. SPECIALTY OCCUPATION

The first issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation.

A. The Law

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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS 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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. 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.

B. Analysis

To determine whether the proffered position qualifies as a specialty occupation position, we turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). We recognize the *Handbook*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 17-2141, Mechanical Engineers, from O*NET. The *Handbook* describes the occupation of "Mechanical Engineers" as follows:

What Mechanical Engineers Do

Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers research, design, develop, build, and test mechanical and thermal devices, including tools, engines, and machines.

Duties

Mechanical engineers typically do the following:

- Analyze problems to see how mechanical and thermal devices might help solve the problem
- Design or redesign mechanical and thermal devices using analysis and computer-aided design
- Develop and test prototypes of devices they design
- Analyze the test results and change the design as needed
- Oversee the manufacturing process for the device

Mechanical engineers design and oversee the manufacturing of many products ranging from medical devices to new batteries.

Mechanical engineers design power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines as well as power-using machines, such as refrigeration and air-conditioning systems.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Mechanical engineers design other machines inside buildings, such as elevators and escalators. They also design material-handling systems, such as conveyor systems and automated transfer stations.

Like other engineers, mechanical engineers use computers extensively. Computers help mechanical engineers create and analyze designs, run simulations and test how a machine is likely to work, and generate specifications for parts.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Mechanical Engineers," <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2> (last visited Apr. 22, 2015).

The petitioner claims that the duties of the proffered position include duties performed by mechanical engineers, such as researching, designing, evaluating, installing, operating, building, testing, repairing, and maintaining automotive parts, equipment, and manufacturing systems and processes; investigating equipment failures; recommending design modifications to eliminate machine or system malfunctions; etc.; however, the submitted evidence does not sufficiently corroborate the petitioner's claims that it requires the performance of those duties in the course of its business.

The petitioner asserts that it designs and builds showrooms, and has provided evidence in support of that assertion. The only indication that the petitioner's business line would require a mechanical engineer, however, is the assertion that the beneficiary would design and construct cutaway views of automobiles and components.

The evidence provided demonstrates that such cutaways may be included in showrooms designed by the petitioner. However, the evidence does not sufficiently demonstrate that the petitioner will design mechanical parts and equipment for its clients, thus requiring the services of a mechanical engineer² on staff. It appears likely that the petitioner's clients would provide the pre-designed and built cutaways to be included by the petitioner in its proposed showroom design rather than the petitioner designing such mechanical parts and equipment for use in the showrooms. Further, even if the petitioner were to design and build such cutaways, the record does not sufficiently demonstrate that designing and building cutaways requires the services of a mechanical engineer. There is insufficient evidence to corroborate the assertion that the petitioner would require performance of the duties described.

² See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Mechanical Engineers," <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineers.htm#tab-2> (last visited Apr. 22, 2015).

Further, some of the duties described also refer to maintenance of the showrooms the petitioner designs and builds. There is insufficient evidence to corroborate the assertion that the petitioner's employees have any duties pertinent to the maintenance of those structures.

For both reasons, the petitioner has not demonstrated the substantive nature of the duties the beneficiary would actually perform if the visa petition were approved.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. U.S. EMPLOYER

Finally, we will briefly address the issue of whether or not the petitioner qualifies as a United States employer with standing to file the H-1B petition. As detailed above, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested. Given this lack of evidence, the petitioner has not established who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has not established whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As previously discussed, there is insufficient evidence detailing the specific projects to be performed by the beneficiary. Therefore, the director's decision is affirmed, and the appeal is dismissed for this additional reason.

IV. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.