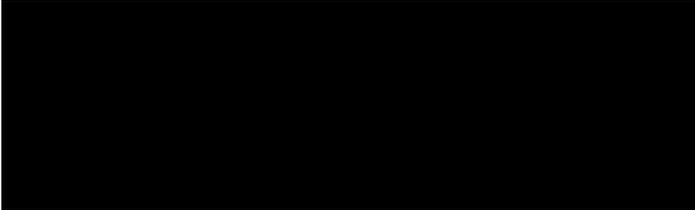




U.S. Citizenship
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Services

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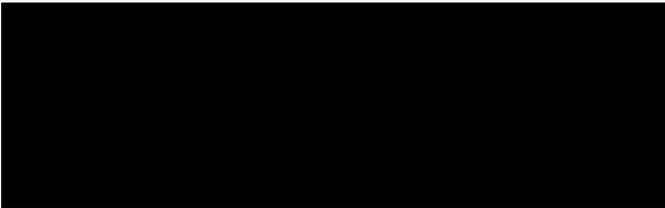
Date: AUG 31 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner sells, services and repairs household appliances. It seeks to employ the beneficiary as an electrical appliance service supervisor and 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 on the ground that the proffered position does not qualify as a specialty occupation.

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.

As provided in 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 thereto; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a company in the business of selling, servicing, and repairing new and used electrical appliances. The petitioner stated that it was incorporated in January 2002, had two employees, and earned a gross income of around \$125,000 in 2002. The petitioner proposed to employ the beneficiary as an electrical appliance service supervisor and described his duties as follows:

Coordinates activities of merchandising-servicing department of electric appliance distributors: Supervises, trains, and assigns duties to workers engaged in servicing appliances, pricing, and disposition of returned merchandise and excess repair parts. Develops company policies and procedures regarding servicing of appliances and disposition of defective parts. Consults manufacturers to obtain advice on unusual service problems and to obtain service instructions and parts catalogs. If need be, performs skilled repair and maintenance operations, using equipment such as hand and power tools, hydraulic presses and shears, and welding equipment.

According to the petitioner the proffered position required a bachelor's degree, or its equivalent, in electrical appliance service supervising or a related discipline. The petitioner asserted that the beneficiary had the equivalent of a bachelor's degree by virtue of his graduation in January 1992 from the Simon Bolivar Higher Technological Institute in Peru, a subsequent certificate from the National University of Education in Peru for coursework in electronics in the years 2000-2002, and ten years of work experience in the fields of electrical technology and electronics.

In response to the RFE the petitioner listed the duties of the proffered position as follows:

- Compile operational and personnel records, such as time and production records, inventory data, repair and maintenance statistics, and test results.
- Compute estimates and actual costs of factors such as materials, labor, and outside contractors.
- Conduct or arrange for worker training in safety, repair, and maintenance techniques, operational procedures, and equipment use.
- Counsel employees about work-related issues and assist employees to correct job-skill deficiencies.
- Determine schedules, sequences, and assignments for work activities, based on work priority, quantity of equipment and skill of personnel.
- Develop, implement, and evaluate maintenance policies and procedures.
- Inspect, test, and measure completed work, using devices such as hand tools and gauges to verify conformance to standards and repair requirements.
- Interpret specifications, blueprints, and job orders in order to construct templates and layout reference points for workers.
- Monitor employees' work levels and review work performance.
- Patrol and monitor work areas and examine tools and equipment in order to detect unsafe conditions or violations of procedures or safety rules.
- Recommend or initiate personnel actions, such as hires, promotions, transfers, discharges, and disciplinary measures.
- Requisition materials and supplies, such as tools, equipment, and replacement parts.

- Confer with personnel, such as management, engineering, quality control, customer, and union workers' representatives, in order to coordinate work activities, resolve employee grievances, and identify and review resource needs.
- Develop and implement electronic maintenance programs and computer information management systems.
- Examine objects, systems, or facilities; and analyze information to determine needed installations, services, or repairs.
- Investigate accidents and injuries, and prepare reports of findings.
- Monitor tool inventories and the condition and maintenance of shops in order to ensure adequate working conditions.
- Participate in budget preparation and administration, coordinating purchasing and documentation, and monitoring departmental expenditures.
- Design equipment configurations to meet personnel needs.
- Meet with vendors and suppliers in order to discuss products used in repair work.
- Perform skilled repair and maintenance operations, using equipment such as hand and power tools, hydraulic presses and shears, and welding equipment.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The evidence of record, the director stated, did not establish that a baccalaureate or higher degree or its equivalent was the minimum requirement for an electrical appliance service supervisor. The record did not establish that a bachelor's degree is common to the industry in parallel positions among similar organizations, the director continued, or that the proffered position is so complex or unique that it can only be performed by an individual with a degree.

On appeal counsel asserts that the director neglected to consider the petitioner's specific business needs for the beneficiary's services – including its Hispanic clientele and plans to expand operations to Latin America – as well as the actual responsibilities of the proffered position. Counsel refers to the Department of Labor (DOL)'s *Dictionary of Occupational Titles (DOT)* and contends that it supports the petitioner's argument that an electrical appliance service supervisor requires a baccalaureate degree. According to counsel, businesses similar to the petitioner's have hired individuals with a baccalaureate degree or its equivalent for the position of electrical appliance service supervisor.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

The proffered position as described by the petitioner in its initial letter to the service center and in its response to the RFE fits the *Handbook's* description of a first-line supervisor/manager of mechanics,

installers, and repairers. *See Handbook*, 2004-05 edition, at page 657. According to the *Handbook*, the most significant source of education or training for such a position is work experience in a related occupation. *See id.* According to the *Handbook*, therefore, a baccalaureate degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into a position as an electrical appliance service supervisor, as required for the position to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for counsel's reference to the *DOT*, *supra* – another DOL resource about occupations – the record includes an excerpt on first-line supervisors/managers of mechanics, installers, and repairers indicating that the occupation has an SVP (“specific vocational preparation”) range of 7.0 to 8.0 and stating that “[m]ost of these occupations require a four-year bachelor's degree, but some do not.” Thus, the *DOT* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into such a position, or that a baccalaureate degree must be in any specific specialty. Moreover, the *DOT* is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into an occupation. An SVP rating is meant to indicate the total number of years of vocational preparation required for a particular position. It does not specify how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a particular position would require. Accordingly, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a position as first-line supervisor or manager of mechanics, installers, and repairers or the proffered position in this case, an electrical appliance service supervisor.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner has submitted a letter from another business in the same line of work that states: “this company had given employment to qualifying people with a minimum requirement of study and experience equivalent to a bachelor degree in the United States, in the occupation of Electrical Appliances Service Supervisor.” The letter seems to indicate that the employer hired one individual in this position who had the equivalent of a bachelor's degree in the United States through a combination of study and work experience. However, the letter does not explain the basis of the asserted degree equivalency, does not specify the degree, and does not state that the degree equivalency was a requirement for the position. Thus, the letter does not establish that a degree is commonly required in the industry for entry into the position. The petitioner also submitted business cards from two other appliance repair and service companies, but with no accompanying evidence that such companies have hired an electrical appliance service supervisor. Simply going on record without supporting documentary evidence does not satisfy the petitioner's burden of proof. *See 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)). In sum, the evidence in the record does not show that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, or that its complexity exceeds that of other electrical appliance service supervisors in the petitioner's industry, such that a degree in a specific specialty would be required. Accordingly, the proffered position does not qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires its electrical appliance service supervisor to have a bachelor's degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As far as the record shows, neither the duties of the position nor the particular circumstances of the petitioner's business distinguish the proffered position in any significant way from that of any other electrical appliance service supervisors in the industry, for whom knowledge associated with a degree in a specific specialty is not normally required.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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