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U.S. Citizenship  
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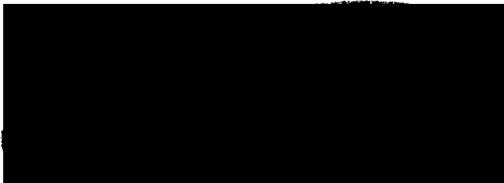
FILE: LIN 03 187 56317 Office: NEBRASKA SERVICE CENTER Date: **MAR 10 2005**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 is a public non-profit radio and television station that seeks to employ the beneficiary as an electronic engineering technician. The petitioner 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 does not qualify as a specialty occupation. On appeal counsel submits a brief and additional information indicating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

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

[A]n 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 are 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) 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 with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an electronic engineering technician. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: maintain and repair studio and transmission equipment including, but not limited to, FM and television transmitters and translators, microwave systems, video switchers, monitors, video cameras, audio equipment, video tape machines, and satellite earth station systems; plan and install broadcast facilities including construction and wiring of new broadcast facilities; conduct routine performance tests and inspections to insure compliance with applicable FCC rules and regulations, including FM and television proof of performance measurements and weekly transmitter inspections; consult with station staff to facilitate staff in the operation of station equipment; install and maintain translators and their associated antennas, towers, and shelters; review and maintain operating and maintenance logs for transmitter plants, translators, STL systems, and other RF equipment; and assist with other engineering duties as assigned. The petitioner requires a minimum of two years of formal education in electronics technology, or the equivalent thereof, or military electronics training, or the equivalent home-study of electronics training for entry into the proffered position.

In response to the director's request for evidence, the petitioner significantly changed the qualification requirements for the proffered position. The qualifications listed above were set forth by the petitioner in its position announcement (collective bargaining unit – non-exempt). In a document entitled position announcement on the petitioner's letterhead, and in a copy of a classified job advertisement for positions devoted to public broadcasting, the petitioner notes that an applicant will be deemed qualified for the offered position based upon training and experience with television and radio transmission/production systems. In response to the director's request for evidence, the petitioner states that it now requires a university degree in engineering or its equivalent. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities/requirements. The petitioner must establish that the position that was offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes

are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The new requirements for the position as noted by the petitioner in response to the director's request for evidence will not, therefore, be considered.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for broadcast and sound engineering technicians. The *Handbook* notes that the best way to prepare for a broadcast and sound engineering technician job is to obtain technical school, community college, or college training in electronics, computer networking, or broadcast technology. Beginners learn skills on the job from experienced technicians and supervisors, often beginning their careers in small stations before moving to larger ones. Large stations usually hire technicians only with experience. Audio and video equipment technicians generally need a high school diploma, but many recent entrants to the field have a community college degree or various other forms of postsecondary degrees, although that is not always a requirement. Experienced technicians may become supervisory technicians or chief engineers. A college degree is needed to become a chief engineer at a large television station. In this instance, however, the petitioner is not a large television station and the beneficiary would, in fact, be the station's only broadcast engineer. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

The petitioner has also failed to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this proposition the petitioner submits copies of job advertisements. The advertisements submitted, however, do not establish that a degree in a specific specialty is an industry standard for the offered position. Some of the advertisements do state that a bachelor's degree is required. Others state that: a bachelor's degree is only preferred, not required; an associate's degree is acceptable; a two-year electronic technical degree is acceptable; or that experience only is acceptable. The advertisements are consistent with the education/training noted in the *Handbook*, and with the qualification requirements noted by the petitioner with the filing of the initial petition. The evidence submitted is insufficient to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree in a specific specialty for the offered position, and in support of that assertion offers the resumes of four past employees. The resumes tendered are not sufficient to establish that any of these employees possess a bachelor's degree. Only copies of their degrees or other documentation from the educational institution where any such degree was obtained confirming the degrees will suffice. Further, the documentation submitted does not establish the assertion. Of the four employees listed, only one purports to have a bachelor's degree (computer science). The remaining employees possessed the following: an AA in electronics engineering/military training/3 years of undergraduate work in political science and psychology at a foreign university; three years of undergraduate work at a foreign university and military training in electronics; and military training in electronics. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, nor

are the duties so complex or unique that they can be performed only by individuals with a degree in a specific specialty. The duties to be performed are routine in the industry for electronic engineering technicians and similar employees, and while requiring significant technical abilities, the duties are not those that are so unique, specialized, or complex as to require a baccalaureate level education to perform them. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner also makes reference to similar petitions approved by CIS, indicating that those approvals establish that the current position is a specialty occupation. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS 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 professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an electronic engineering technician. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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