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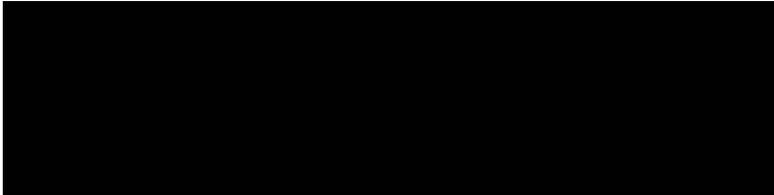
FILE: WAC 04 029 50994 Office: CALIFORNIA SERVICE CENTER Date: **MAR 22 2006**

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:



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, 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 telecommunications consulting company that seeks to employ the beneficiary as an engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional evidence including copies of the petitioner's job announcements and advertisements from other businesses as supporting documentation.

The AAO will first address the director's conclusion that the position is not 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.

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.

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 to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 3, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's November 3, 2003 letter, the beneficiary would perform the following duties:

Under supervision, [the beneficiary] will provide implementation, installation, testing and trouble shooting of Radio Base Station/Base Transceiver stations, commission integration of AXE equipment. He will co-ordinate between project management supervisors for radio acceptance tests and preparation of method of procedures.

The petitioner indicated that the beneficiary was a qualified candidate for the job because of his education, skills, and employment experience.

The director found that the proffered position was not a specialty occupation because the job is not an electrical engineering position; it is a radio and telecommunications equipment installer and repairer position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of an electrical/test engineer, and is not a radio technician. Counsel states further that, according to the *Handbook*, radio technicians do not even work on cellular equipment. Counsel states further that the petitioner normally requires a degree for the proffered position and that this degree requirement is industry wide. Counsel submits copies of the petitioner's job announcements and advertisements from other businesses as supporting documentation.

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 turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an electrical/test engineer. The beneficiary's job duties do not entail the level of responsibility of an electrical/test

engineer, who primarily designs, develops, tests, and supervises the manufacture of electrical equipment. *See the Handbook, 2006-2007 ed.* under the category of Engineers.

A review of the Radio and Telecommunications Equipment Installers and Repairers job description in the *Handbook, 2006-2007 edition*, confirms the accuracy of the director's assessment to the effect that the job duties parallel those responsibilities of a radio and telecommunications equipment installer and repairer. The *Handbook* states:

*Telecommunications equipment installers and repairers, except line installers*, install, repair, and maintain the array of increasingly complex and sophisticated communications equipment and cables. Their work includes setting up, rearranging, and removing the complex switching and dialing equipment used in central offices. They may also solve network-related problems and program equipment to provide special features.

Radio and telecommunications equipment installers and repairers held about 222,000 jobs in 2004. About 215,000 were telecommunications equipment installers and repairers, except line installers, mostly working in the telecommunications industry, and the rest were radio mechanics. Radio mechanics worked in electronic and precision equipment repair and maintenance, telecommunications, electronics and appliance stores, and many other industries.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for this a radio and telecommunications equipment installer and repairer job.

It is also noted that in the petitioner's November 3, 2003 letter, the petitioner's director stated that the beneficiary would be working under supervision. In the petitioner's July 12, 2004 response to the director's request for evidence, however, the petitioner's director stated that the proffered position demands a person with the ability to work independently. Further, information on the petition, which was signed by the petitioner's director on November 3, 2003, reflects that the petitioner has 30 employees and a gross annual income of \$11,120,186. The petitioner's quarterly wage reports for the quarter ended on December 31, 2003, however, reflects only 21, 23, and 24 employees for October, November, and December, respectively. The record contains no explanation for these discrepancies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Furthermore, the record contains no evidence of the petitioner's claimed gross annual income of \$11,120,186, such as federal income tax returns. 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)).

Regarding parallel positions in the petitioner's industry, the petitioner submits job postings for various positions, including radio planning engineer, "Engineer I – Svcs," and technical support manager. There is no evidence, however, to show that the employer issuing those postings is similar to the petitioner, or that the advertised positions are parallel to the instant position. The employer in all three advertisements is a world-leading provider of telecommunications equipment and related services to mobile and fixed network

operators globally. The duties for the radio planning engineer position include handling, with other departments, the 2G radio roll-out process, starting with site design up to integration and creating a theoretical design based on the marketing objectives and site budget. The petitioner has not demonstrated that the duties of the proffered position are as complex as the duties described in the advertised position. This employer also advertises for an "Engineer I – Svcs" and for a technical support manager, with duties that entail assisting in analysis design, verification, and integration of solutions in the service layer, and serving as the main point of contact for supporting all network performance related activities. Again, the petitioner has not demonstrated that the duties of the proffered position are as complex as the duties described in the advertised positions. Thus, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the record contains the petitioner's job advertisements for a two-year period as evidence that the petitioner normally requires a degree or its equivalent for the proffered position. One of the petitioner's advertisements is for "Switch Test and O&M Engineering Supervisors," with duties that entail mentoring new engineers. The proffered position, however, is not a supervisory position, as stated by the petitioner's director in his July 12, 2004 letter. Another advertisement is for an "Engineer, Test (Switch)," which specifies the requirement of a bachelor's degree in electrical, electronics, or computer engineering. CIS, however, must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or 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.<sup>1</sup> In this regard, the petitioner fails to establish that the "engineer" position it is offering to the beneficiary requires the application of such a body of knowledge and the attainment of such a degree.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record's descriptions of the proffered position and its duties do not provide any information about practical and theoretical engineering applications that the beneficiary would use on the job. Nor does the

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

record establish any correlation between concrete work that the beneficiary would perform and the highly specialized engineering knowledge attained by a bachelor's degree or the equivalent in engineering. This evidentiary aspect of the record of proceeding precludes the petitioner from satisfying any of the specialty occupation criteria of C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The director also found that the beneficiary was not qualified to perform a specialty occupation because the beneficiary's bachelor's degree in zoology is unrelated to the proffered position. The director found further that the credentials evaluation submitted by the petitioner does not demonstrate that the beneficiary's educational background and employment experience are the equivalent of a bachelor's degree in telecommunications engineering. On appeal, counsel states, in part, that the record contains evidence of the beneficiary's bachelor's degree, training certificates, professional employment experience, and a credentials evaluation to demonstrate that the beneficiary holds the equivalent of a bachelor's degree in a relevant field. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a radio and telecommunications equipment installer and repairer. Most employers seek applicants with postsecondary training in electronics and a familiarity with computers. In this case, the record indicates that the beneficiary has related training and employment experience. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not a specialty occupation. 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.

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