

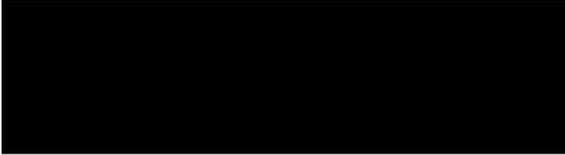


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U.S. Department of Justice  
Immigration and Naturalization Service

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prevent clear identification  
of person of interest~~

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-01-069-51826 Office: Vermont Service Center

Date: 24 APR 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a film and video services business with 40 employees and a gross annual income of \$5 million. It seeks to employ the beneficiary as a reliability engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director determined that the proffered position appears to be that of an engineering technician, an occupation which has no requirement for a baccalaureate degree in a specialized area.

On appeal, counsel argues that the duties of the proffered position are those of an electronics engineer and not those of an engineering technician. Counsel further argues that, even if it were to be concluded that the proffered position is actually that of an engineering technician, the Department of Labor (DOL) has determined in its Dictionary of Occupational Titles (DOT) that the position of engineering technician also requires a baccalaureate degree in a specialized area.

Counsel's argument on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. The petitioner states that it is a provider of professional video duplication, dubbing, replication, and broadcasting engineering for advertising agencies and television production companies on a worldwide basis. The petitioner states that it is expanding its business activities and introducing new

products and, therefore, requires the services of a reliability engineer who will be responsible for product analysis and the designing of mechanical systems. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Plan and direct activities concerned with development, application, and maintenance of quality standard for equipment.
2. Develop and initiate standards and methods for inspection, testing, and evaluation utilizing knowledge from the engineering field.
3. Devise sampling procedures and designs and develop forms and instructions for recording, evaluating, and reporting quality and reliability data.
4. Establish program to evaluate precision and accuracy of production equipment, and testing, measurement, and analytical equipment and facilities.
5. Direct workers engaged in operating and testing product and tabulating data concerning materials, products, or process quality and reliability.
6. Compile and write materials of quality control activities.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position is that of an electrical engineer. According to the DOL's Occupational Outlook Handbook, (Handbook) 2002-2003 edition, at pages 110-111, electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment, including broadcast and communications systems.

The holder of the proffered position will not be involved in the design, development, or measuring of electrical equipment. Rather, the holder of the position will perform such tasks as developing quality standards for existing equipment, establishing programs to evaluate precision and accuracy of production equipment, directing workers engaged in operating the equipment, and writing reports on qualify control activities. These duties appear to be those typically performed by electrical and electronics engineering technicians.

The Handbook describes the duties of electrical and electronics engineering technicians at pages 101-102 as follows:

electrical and electronics engineering technicians help design, develop, test, and manufacture electrical and electronic equipment such as communication equipment, radar, industrial and medical measuring or control devices, etc. They may work in product evaluation and testing, using measuring and diagnostic devices to adjust, test, and repair equipment.

A review of the Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an electrical or electronics engineering technician. Most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community college, extension divisions of colleges and universities, public and private vocational-technical schools, and the Armed Forces.

Counsel asserts that the DOL has determined in its DOT that the proffered position requires a baccalaureate degree in a specialized area. However, a reference in the DOL's DOT, Fourth Edition, 1977, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are

not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

Counsel submits, on appeal, an evaluation report of the proffered position from [REDACTED] Associate Professor of Computer Information Systems at the Zicklin School of Business, Baruch College of The City University of New York [REDACTED] that the proffered position qualifies as a specialty occupation based on the petitioner's description of the duties of the position. Although [REDACTED] be qualified to evaluate the educational credentials of the beneficiary, she has not provided any credentials setting forth her ability to give expert testimony regarding the question of whether the proffered position qualifies as a specialty occupation. That determination is the province of the Service as set forth within the Immigration and Nationality Act (INA). In view of the foregoing, it is concluded that the petitioner has not shown that a bachelor's degree in a specific, specialized area is a normal minimum requirement for entry into the field.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

Third, the petitioner did not show that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. The petitioner has submitted eight internet job advertisements for reliability engineer positions. These ads specify that a bachelor's degree in engineering and experience are required. However, none of these ads are for a reliability engineer working in a film and video services company. One position involves environmental testing; one involves development of software reliability processes and procedures for hardware, embedded software, and desktop software products; one involves the design of mechanical systems; one involves the design and development of Ford automotive parts; one involves working with automated wafer processing equipment for the worldwide semiconductor market; one involves work with fiber optics, semiconductors, and optical components; one involves the manufacturing of medical devices; and finally, one position

involves the development of high performance silicon chips. Additionally, these ads do not contain sufficient information to determine whether these employers are similar to the petitioner in their type of operations, number of employees, and amount of gross annual income. Thus, the evidence of record does not support a finding that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.