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U.S. Department of Justice  
Immigration and Naturalization Service

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

**PUBLIC COPY**



File: LIN-01-176-55497 Office: Nebraska Service Center

Date: 16 DEC 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: SELF-REPRESENTED

**Identifying data deleted to  
prevent unwarranted  
invasion of personal privacy**

**INSTRUCTIONS:**

This is the decision 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.

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 that 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 that 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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of testing equipment in the traffic industry with thirteen employees and a stated gross annual income of \$1 million. It seeks to employ the beneficiary as an electrical engineer for an unstated period of time. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement and an expanded description of the duties of the offered job.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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 denied the petition because the description of the duties of the proffered position was so general that the precise function of the beneficiary in the position could not be determined. On appeal, the petitioner provides an expanded description of the beneficiary's duties in the offered job, as well as a breakdown of the percentage of time allocated to the tasks and responsibilities of the position.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Designs, develops, and tests all aspects of electrical components, equipment, and machinery. Has [k]nowledge of commonly-used concepts, practices [and] procedures within the field.

In response to a subsequent Service request for a more detailed description of the duties of the proffered position, the petitioner submitted an identical description to that cited above.

The expanded description of the duties of the beneficiary that the petitioner submits on appeal, states, in pertinent part, as follows:

The electrical engineer must design, develop, test, and supervise the manufacture and installation of electric and electronic equipment, components, or systems for commercial, industrial, government, or scientific use. The electrical engineer designs new products, writes performance requirements, and develops maintenance (calibration) schedules. The electrical engineer also tests equipment, solves operating problems, and estimates the time and cost of engineering projects. The engineer should have broad knowledge of and experience with electronics and computer systems, strong problem solving and analysis skills, and good interpersonal skills. Courses and practice in computer programming and systems design are required preparation.

During a project, the electrical engineer will typically allocate the time for these tasks as follows:

Design and develop equipment:	40%
Programming:	15%
Test Equipment:	10%
Supervision of manufacture and/or installation:	5%
Write performance requirements:	3%
Develop maintenance (calibration) schedule:	2%

Solve operating problems:	10%
Time and Cost estimates:	5%
Documentation of Design:	10%

The duties described are too vague for a finding that the job is for an electrical engineer position. The job duties listed above paraphrase the description of the duties of an electrical engineer contained in the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 110-111, to such an extent that they do not represent a substantive job description. The listed duties are not specific enough to the company's stated business to show that the beneficiary will execute these duties.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. 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 proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions. As the duties and responsibilities of the proffered position in relation to the petitioner's specific business activities are not indicated, 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.