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U.S. Department of Justice
Immigration and Naturalization Service

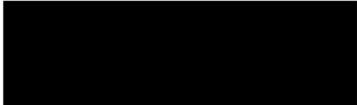
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-00-225-51249 Office: Vermont Service Center

Date: 15 FEB 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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a motel with five employees and a gross annual income of \$450,000. It seeks to employ the beneficiary as an engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 denied the petition because the duties described by the petitioner appeared to relate to the job of a building maintenance manager, an occupation that does not require a baccalaureate degree. The director further found that the beneficiary does not possess a degree nor any college education. On appeal, counsel states, in part, that the duties of the offered position are more sophisticated than the duties of a building maintenance manager and are more similar to those of an electrical engineer. Counsel also states that the beneficiary's educational background and work experience qualify him to perform the proposed duties.

Counsel's statement 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. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

...[the beneficiary] will be in charge of the electrical systems, air-conditioning, communication systems and other. His responsibilities inter alia include ensuring

operation of the systems and functioning of the components and equipment with efficiency and without interruption. He will coordinate and analyze the power load demands and supply power/generating capacity. He will recommend installation of additional power/generating supply system [sic] to ensure requisite supply of power for operations. He will also arrange for proper distribution of the power supply with suitable arrangement of circuits, size, type and number of equipment, including transformers, circuit breakers, switching, lightning arresters and a fine lay-out of distribution panels at appropriate centers. He will also direct and coordinate operations, maintenance and repairs of the equipment and systems.

He will be required to diagnose the cause of electrical or mechanical malfunction or failure of operational equipment; function as a trouble-shooter performing preventive and corrective maintenance, applying the engineering data and knowledge of electrical principals [sic]. He will deal with and direct personnel working under him.

He will establish a system of ongoing continuous inspections and checks to ensure appropriate power supply and operations of the equipment without interruptions such as overload, etc. and to achieve economies of operations, centralized control and, above all, consumer/client safety.

In short, his duties will be to analyse [sic] existing systems, vis-a-vis the requirements; install new systems, if and as necessary; supervise installations thereof and test their functions; maintain, repair and trouble-shoot at any and all times to ensure efficient, uninterrupted service.

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 beneficiary is an electrical engineer, an occupation that would normally require a bachelor's degree in electrical engineering or a related field. Counsel asserts that the Department of Labor (DOL) has determined that the proffered position is a specialty occupation. However, a reference in the DOL's Dictionary of Occupational Titles (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 Occupational Outlook Handbook (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.

In its Handbook, 2000-2001 edition, at pages 90-91, the DOL describes the job of electrical and electronic engineers as follows:

Electrical and electronics engineers design, develop, test, and supervise the maintenance of electrical and electronic equipment. Some of this equipment includes power generating, controlling, and transmission devices used by electric utilities; electric motors, machinery controls, lighting, and wiring in buildings, automobiles, and aircraft; and in radar and navigation systems, computer and office equipment, and broadcast and communications systems.

The record reflects that the petitioner, which is in the motel business, employs approximately five persons and has a gross annual income of 450,000. The business in which the beneficiary is to be employed does not require the services of an electrical engineer who designs, develops, tests, and supervises the manufacture of electrical and electronic equipment.

The duties that the petitioner endeavors to have the beneficiary perform are maintenance duties, which are similar to the duties that an electrician and a heating, air-conditioning, and refrigeration mechanic and installer would execute in a small business establishment. In contrast to the description of an electrical engineer, at page 422 of the Handbook, the DOL describes the position of an electrician as follows:

Electricians install, connect, test, and maintain electrical systems for a variety of purposes, including climate control, security, and communications. They also may install and maintain the electronic controls for machines in business and industry...

Electricians work with blueprints when they install electrical systems in factories, office buildings, homes, and other structures.

Also, at pages 391 and 392 of the Handbook, the DOL describes the position of a heating, air-conditioning, and refrigeration mechanic and installer as follows:

Heating, air-conditioning, and refrigeration systems consist of many mechanical, electrical, and electronic components such as motors, compressors, pumps, fans...In central heating systems, for example, a furnace heats air that is distributed throughout the entire building via a system of metal or fiberglass ducts. Technicians must be able to maintain, diagnose, and correct problems throughout the entire system. To do this, they adjust system controls to recommended settings and test the performance of the entire system using special tools and test equipment.

Those working for smaller operations tend to do both installation and servicing, and work with heating, cooling, and refrigeration equipment.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of an electrician and a heating, air-conditioning, and refrigeration mechanic and installer position rather than an electrical engineering position. For example, the petitioner states that the beneficiary's duties will "include ensuring operation of the systems and functioning of the components and equipment with

efficiency and without interruption," and "coordinate and analyze the power load demands and supply power/generating capacity..." Such general maintenance duties are not duties normally associated with an electrical engineer. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

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 such as an engineering-related field, for the offered position. Third, the petitioner did not present any documentary evidence 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. 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. The job fits the description of an electrician and a heating, air-conditioning, and refrigeration mechanic and installer position, rather than an electrical engineer. A review of the DOL's Handbook, 2000-2001 edition, at pages 422-423 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an electrician. People usually learn the electrical trade by completing a 4- or 5-year apprenticeship program. Others still learn their skills informally, on the job. Likewise, a review of the DOL's Handbook at page 393 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a heating, air-conditioning, and refrigeration mechanic and installer. Most employers prefer to hire those with technical school or apprenticeship training. Here again, a sizable number of technicians still learn the trade informally on the job. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

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.