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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: EAC 02 139 52780 Office: VERMONT SERVICE CENTER Date: APR 25 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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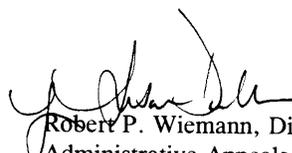
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Philadelphia corporation that specializes in the manufacture, research, and development of metal and plastic cans, crown and closures. It has 40,000 employees and a gross annual income of \$8.2 billion dollars. It seeks to temporarily employ the beneficiary as an electrical engineer in its Worland, Wyoming plant for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation, or that the beneficiary was qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the Bureau's decision is erroneous and arbitrary and submits additional materials for the record.

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 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 field 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 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 first issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Vermont Service Center on May 20, 2002, the petitioner described the position as an electrical engineer and explained the duties of the proffered position as follows:

Job Responsibilities (Primary)

- Daily supervision and management of six (6) plant electricians and electrical technicians.
- Exercise independent judgment in the design or redesign, manufacture, installation, operation, or maintenance of electrical and electronic systems or equipment.
- Apply research principles and techniques to the design, development, or testing of electrical and electronic systems, equipment, or facilities.
- Engineer, design and install capital projects.
- Perform assignments as part of a work team involved with the planning, organizing, and development of projects.
- Recommend physical testing to determine equipment condition and performance.
- Function as a process resource to maintenance, engineering and operations personnel, and to make appropriate recommendations for improvements.
- Strong understanding of Electrical Code, PLC controls and instrumentation.
- Monitor supplies and spare parts inventories.
- Complete AutoCad drawings of electrical schematics.
- Provide computer hardware support for plant.
- Maintain and update plant communications network including phone and P.A. systems.
- Write and maintain PLC programs for automated processes.
- Strong understanding of and ability in using Texas Instrument and Allen Bradley controllers and in their programming languages.

Job Responsibilities (Secondary)

- Assist MTS with management of annual budget.
- Assist in maintaining a failure analysis program.
- Environmental issues.
- Chair/serve on World Class Performance committees.
- Actively participate in addressing safety issues.
- Function as a resource to other Crown plants globally.

With regard to educational requirements, the job description stated "A B.S. in Electrical Engineering is a plus but not required," and added the following:

Four plus years of relevant supervisory experience are required, preferably in a plant environment. Strong computer skills including CAD knowledge are also required.

The petitioner also submitted a diagram of plant personnel at the Worland, Wyoming plant #2 that indicated the beneficiary would work under the Manager of Technical Services.

On March 28, 2002, the director requested further information from the petitioner. In particular, the director requested more information to establish that the proffered position was a specialty occupation. The director stated: "While some electrical engineers/electrical technicians may be considered specialty occupations, your description of the job duties associated with this position does not demonstrate that the preponderance of the beneficiary's job duties will be so complex that they could be considered professional in nature."

For further documentation, the director requested the petitioner's in-house job announcement for the petition; job postings that the petitioner had utilized to hire for the position; and a detailed statement of the beneficiary's proposed duties and responsibilities, with a breakdown of the percentage of time that the beneficiary would spend performing these particular functions each day. The director further requested that the petitioner indicate which specific tasks required the expertise of someone who held a baccalaureate degree and how the beneficiary's education related to the position.

In addition the director requested evidence that in the petitioner's company and in comparable businesses in the container manufacturing industry, a baccalaureate degree is a required standard minimum for the position. If the petitioner had employed such degreed individuals previously, the director requested documentary evidence to establish this fact, such as college transcripts or employment records.

In response, counsel stated that the Bureau had not identified any specific area of enquiry in its request for further information since none of the boxes shown on the request for additional evidence had been checked. Counsel submitted further clarification of the petitioner's operations and the beneficiary's duties and stated: "[The beneficiary] with his degree, has the capability of working in tandem and as part of the team with his peers all of whom are U.S. degreed Engineers."

Counsel stated that the position had responsibilities that only a degreed electrical engineer can provide, and described these responsibilities as follows:

1. Problem solving capabilities that include the necessity to have the knowledgeable interface with other degreed electrical engineers.
2. Interface and direction for and from, corporate engineers relative to new installations, upgrades and improvement requirements. This includes the capability to design and implement projects that not only meet proper engineering requirements but that will function for betterment of the process.
3. Direct supervision of fully qualified electricians in the performance of their duties for coverage of the plant 24 hours per day when operational.

Counsel also provided the following description of the technical nature of the beneficiary's duties:

1. The machinery in a two-piece can line are fully automatic machines controlled by onboard computers. In order for these machines to run they have to be programmed to perform specific tasks. The software, which is used, is called logical control and is manufactured by both Allen Bradley and Texas Instruments. This software is used to program the logic controllers in a programming language called ladder logic. In the event of any machine modifications being carried out the changes have to be approved by the corporate engineering team which consists of both electrical and mechanical engineers. The software will be written by the resident electrical engineer who will then involve the corporate team before implementing the changes. Any changes that are made in a specific plant are made known to the other divisions thereby involving all resident engineers. The same will apply to machine installations[.] [E]very plant has a different machine layout[.] This is due mainly to the building size and design. Before the machines can be installed a layout has to be designed and approved by the corporate engineers.

2. The machines, which are used to manufacture a two-piece, can [are] designed specifically for the canning industry. Presses are used [to] manufacture the can followed by printing presses for the design, coating machines to provide internal protection, die necking machines to form the profile of the neck of the can, testers to check for any internal or external damage and palletizers to pack the cans onto pallets. A direct knowledge of these machines is essential as some of the machines are operating at speeds in excess of 1800 cans per minute. Any upgrades which are made have to be researched extensively as damage could be caused to the machines resulting in down time as well as the cost of the repairs. Because these machines are built specific for the canning industry machine parts are very costly. Knowledge of the production machines as well as the software is critical to trouble shoot in the event of any line stoppage. A typical can plant has to product in excess of three million cans a day in order to satisfy customer requirements[.] [E]xcessive machine downtime due to the lack of knowledge will impact the plant performance negatively.
3. Project design and implementation is when there is more than one machine being installed. Once a can is manufactured it has to be conveyed from point 'a' to point 'b'. Mechanical conveyors are used to convey the product which means that each new machine that is installed has to be linked to a conveyor network. These conveyors and their design form a major part of any new machine installation. Due to the increasing demand for two piece cans, production lines are continually being upgraded to satisfy customer needs. Line upgrades are carefully planned so as not to disrupt normal production[.] [T]his planning is critical, so in order to insure timeless execution, corporate engineers are consulted.

On April 29, 2002, the director denied the petition, stating that the assertions of counsel with regard to the technical background needed to perform the job shed little light on the level of education required to perform the duties described.

The director examined the Department of Labor's (DOL) *Dictionary of Occupation Titles (DOT)* with regard to the description of electrical engineer; however, he stated that the record was not clear with regard to whether a majority of the beneficiary's time would be spent on the type of tasks outlined in the *DOT*. The director also noted the petitioner's statement on the job description that a degree in electrical engineering would be a plus, and stated that it did not appear reasonable that the duties of the job as outlined in the *DOT* could be performed by an

individual without a baccalaureate degree.

On appeal, counsel asserts that misunderstanding appears to exist with regard to the job requirements, the products involved, the procedures involved, and ultimately, the qualifications of the beneficiary. Counsel also submits a copy of an article entitled "The Aluminum Beverage Can" from the September 1994 issue of *Scientific American* and concludes the appeal with the following statement on the nature of the proffered position:

The position of Plant Electrical Engineer is one of these unique operations [that] requires a solid academic education as a foundation plus a significant amount of experience specific to the technology. This combination is not commonly found among electrical engineers exiting college. The skills required include application of principles of engineering and science for equipment operation, but more critically the synchronization of many pieces of this high-speed modulated equipment in lines interconnecting several mechanical, chemical and organic coating processes. The finished can is precision formed in several operations, washed, decorated, coated, tested and palletized starting from a coil of sheet aluminum. There is no human intervention in the process. The electrical engineering skills involved to accomplish this around the clock, day after day, at speeds of over 2,000 cans per minute [are] very unique and specialized.

Upon review of the record, the petitioner has not presented a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position as a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The position as described by the petitioner appears to be that of an electrical and electronics engineering technician with specific expertise in the can manufacturing field within a plant environment. The job appears to combine some elements of an electronics engineer, as well as a computer hardware engineer. To the extent that the petitioner did not provide additional documentation to establish the percentage of time that the

beneficiary would perform the numerous duties listed in the job description, it appears that the proffered position is that of a supervisory engineering technician.

On page 100 of the *Handbook*, the nature of the work of electrical and electronics engineering technicians is described 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, navigational equipment and computers. . . . Electrical and electronic engineering technology is also applied to a wide variety of systems such as communication and process controls. [They] combine fundamental principles of mechanical engineering technology with knowledge of electrical and electronics circuits to design, develop, test and manufacture electrical and computer-controlled mechanical systems.

With regard to training and other qualifications, the *Handbook* states:

Although it may be possible to qualify for a few engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and the Armed Forces.

Accordingly the *Handbook* indicates that the minimum educational requirement for entry into the electronics technician field is a two-year associate degree, rather than a four-year baccalaureate degree. To the extent that a baccalaureate or higher degree or its equivalent is not required for entry into the electronic technician field, the proffered position is not a specialty occupation.

II. 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook (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." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a supervisory electronic engineering technician position were discussed in the previous section, and shall not be repeated here. In the instant petition, the petitioner submitted no documentation to establish the industry standard for plant engineers within the can manufacturing industry. In addition counsel submitted no documentation that any professional engineering technology association has made a bachelor's degree a requirement for entry into the field, and has not submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner submitted a *Scientific American* magazine article on aluminum can manufacturing as well as an unattributed statement in its appeal with regard to the petitioner's position of plant electrical engineer. On page 48, the *Scientific American* article states: "The engineers who press the design of cans toward perfection apply the same analytical methods used of space vehicles. [M]anufacturers of aluminum cans exercise the same attention and precision as do makers of the metal in an aircraft wing." The unattributed statement in the appeal says the following:

The position of Plant Electrical Engineer is one of these unique operations [that] requires a solid academic education as a foundation plus a significant amount of experience specific to the technology. This combination is not commonly found among electrical engineers exiting college. The skills required include application of principles of engineering and science for equipment operation, but more critically the synchronization of many pieces of this high-speed modulated equipment in lines interconnecting several mechanical, chemical and organic coating processes.

It is difficult to evaluate what weight to give to the materials placed by the petitioner on the record with regard to the technology involved in manufacturing aluminum cans. For example, the article from *Scientific American* refers extensively to the history of the work done in the manufacturing field to produce

beverage cans out of aluminum. While the achievement of combining scientific and engineering skills to produce aluminum cans instead of steel cans is noteworthy, the record is not clear what this article can say with regard to the actual work performed by the beneficiary at a local can manufacturing plant.

In addition, if the statement at the end of the appeal is submitted as expert testimony, the Bureau maintains discretion as to whether it will use statements submitted to the record as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The statement that counsel submitted in the appeal can be given no weight without some attribution of the source of the statement, and what authority this source possesses. As such, neither piece of documentation submitted by counsel establishes the complexity and uniqueness of the proffered position. Accordingly the petitioner has not established the second criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The record is somewhat confused with regard to this criterion. For example, the Labor Certification Request for Prevailing Wage Information that the petitioner submitted to the Laramie Employment Resources Center on February 25, 2002, states that the position requires a college degree, in "B.Sc. E. E. Technology." However, the job description submitted by the petitioner in the I-129 petition clearly states that a bachelor of science degree in electrical engineering is "a plus", but not required. The petitioner submitted no further evidence to the record with regard to individuals who hold or who have held similar positions either in its Worland, Wyoming plant or in other manufacturing plants within the United States. Without more persuasive evidence, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

The job description provided by the petitioner contains numerous duties for the beneficiary, although as stated previously, no subsequent documentation has been submitted to distinguish what percentage of time is to be spent by the petitioner on the various duties.

To the extent the record is not clear as to how much time the beneficiary will spend using his independent judgment in the design or redesign of electrical and electronic systems versus working in a team in the planning of projects, or maintaining and updating the plant communications network, there is insufficient information on the record to establish that the proffered position in the Worland plant is either complex or specialized. In addition, it is unclear

how specialized and complex the proffered position is with regard to the actual work to be done in the Worland plant. For example, it is not clear from the record whether the beneficiary would be instrumental in the installation of entirely new manufacturing systems involving the Allen Bradley or Texas Instruments controllers or simply maintaining the already installed systems. From the letter provided by the petitioner as to the beneficiary's previous three year period of employment with Crown Cork, the actual installation of a new system appears to be much more complex than the maintaining of an existing system. Without more persuasive evidence, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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 second issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

With regard to judging whether practical experience or

specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

. . . equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: provides four alternative criteria to establish such equivalency. The criteria are:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must

be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In the original petition, the petitioner submitted an educational and work experience equivalency document from Globe Language Services, Inc., along with the following materials: an affidavit from the beneficiary as to his previous work experience; letters from three previous employers that described the beneficiary's job duties while in their employ; and the beneficiary's personal, education, and employment profile. No transcripts of coursework, diplomas, or certificates were submitted for the record.

The document from Globe Language Services, Inc. stated that based on his education the beneficiary had the equivalent of one semester of undergraduate study in an accredited United States university. With regard to the beneficiary's work experience, the evaluator determined that the beneficiary's twelve years of work experience were the equivalent of a baccalaureate degree in electrical engineering technology.

The director requested further documentation from the petitioner as to whether the beneficiary was qualified to perform the duties of the proffered position. In particular, he requested an evaluation from an official who had the authority to grant college level

credit in the professional area for the proffered position at an accredited college or university which had a program for granting such credit based on an individual's training or work experience. The director also stated that the petitioner could also submit other evidence to demonstrate that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty; that the claimed experience was gained while working with peers, supervisors, and/or subordinates who had a degree or equivalent in the specialty occupation; and the beneficiary had recognition of expertise in the specialty occupation based on the types of evidence outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (D) (5).

In response, counsel submitted a letter in which he asserted, in part, that the beneficiary "has the capability of working in tandem and as part of the team with his peers all of whom are U.S. degreed engineers." Counsel submitted no evidence to establish this assertion as fact, and submitted none of the additional documentation requested by the director.

In denying the petition, the director stated that the educational evaluation materials, combined with the supporting letters from the beneficiary's previous employers, "were not sufficient to support a finding that the beneficiary had been engaged in progressively responsible positions directly related to the specialty." The director cited to the electrical engineer classification in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* in pointing out that two and four year engineering technology degrees prepared students for practical design and production work, rather than for jobs that require more theoretical and scientific knowledge. The director then stated that the evidence failed to establish that the beneficiary had achieved expertise beyond practical design and production work.

On appeal, counsel asserts that the beneficiary has "over three years of academic coursework and twelve years of work experience." Counsel submits a letter from the Director of Human Resources, Crown, Cork & Seal, Inc., that describes in greater detail the beneficiary's work as electrical project manager and project manager during a three year project to convert three two-piece can production lines.

Counsel then provides a breakout of coursework that he claims the beneficiary has done and correlates these courses with the job duties of the proffered position. The courses are broken out into the subject areas of electrical principles, electrical technology and industrial electronics.

Upon review of the instant petition, the record is not clear as to the beneficiary's actual academic education. The beneficiary's education profile indicates that he attended a course at Bulawayo Technical College, in Zimbabwe. The course is identified as "Course 236 A B C," while the beneficiary's personal profile identifies this course "electrical engineering." The education profile also

states that the beneficiary participated in a 130 week apprenticeship in theoretical studies in the Zimbabwe Sugar Refineries, as well as 39 weeks in practical work in the Pietermaritzburg municipality. No documentary evidence, such as diplomas, certificates, or course transcripts, has been placed on the record to clarify what subject areas were undertaken during this program and at what educational level, and what, if any, licensing resulted from this training. The program appears to be a vocational apprenticeship program in electrical engineering.

In addition, pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D), the record remains incomplete with regard to any equivalency evaluation of the beneficiary's education and work experience. On appeal, counsel asserts that the beneficiary has three years of academic studies and correlates three subject areas with the job duties of the proffered position. It appears that counsel is attempting to provide an evaluation of the equivalency of the beneficiary's work to his vocational studies at Bulawayo Technical College in Zimbabwe. This evaluation fails on two points. First, the assertions of counsel as to the beneficiary's academic coursework and how the job duties of the proffered position relate to the coursework do not constitute evidence. *Matter of Obaigbena*, 19 I & N Dec. 533, 534 (BIA 1988) Counsel submits no documentary evidence to support his assertions with regard to the beneficiary's academic coursework.

Second, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), any evaluation of the beneficiary's educational background in combination with his employment experience needs to be done by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. Neither counsel nor Globe Languages Services, the company that evaluated the beneficiary's educational and work credentials, has the authority to grant college-level credit for the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), the Bureau can make a determination that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. With regard to determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

With regard to the instant petition, the beneficiary has twelve years of relevant electrical technology and engineering work in various foreign countries. Although the record is clear that the beneficiary has enough work experience to meet the numerical equation for educational equivalency, the record does not establish

that the beneficiary meets the other requirements of 8 C.F.R. § 214.2 (h) (4) (iii) (D) (5).

The beneficiary's employment profile, and letters from previous employers provide the following overview of his work experience:

C.C.H. Engineering, Carlisle, United Kingdom

October 2001 to present Title: Electrical Manager, Europe.

Job Responsibilities: Design of electrical circuits to enable can production machines to be controlled by a central computer; managing of electrical installation projects; supervising installation of electrical components by subordinates, converting production machines to operate on a computerized system, including installation of a computer processor; linking together a computer network to communicate with machines in the production line. Supervised four technicians and one degreed engineer.

Roeslin and Associates, Asia, Ltd.

September 2000 to August 2001 Title: Electrical Engineer/Process Specialist (Contract Worker)

Job Responsibilities: Electrical design of circuit to enable can production machines to be controlled by a central computer; supervising installation of electrical components of client company's employees; managing of electrical installation projects. Supervision and training of client company employees to ensure ongoing quality control, machine maintenance, complex computer network setup

Rheem Can Wadeville

March 1993 to September 2000 Title: Plant Electrical/Engineering Manager

Job Responsibilities: member of Plant management executive, Maintaining machinery, mechanically and electrically for can production, including operating a planned maintenance program as well as manufacture of machine parts; Statistical process control to ensure collection of data from the production line, setup of maintenance software package and computer network. Supervised a maintenance staff of eight mechanics and five electricians.

Crown Cork Company SA LTD

Title: Electrical Technician September 14, 1990 to March 3, 1993

Job Responsibilities:

According to a letter from the Human Resources department of Crown Cork that was submitted by counsel on appeal, the beneficiary served in the capacity of electrical project manager in charge of

all electrical maintenance issues with the plant. He also served as the project manager in charge of the installation and conversion of all PLC's in the plant to an Allen Bradley PLC system during a three year project to convert all three of the two-piece can lines. According to the letter, the beneficiary was in charge of two electricians during this time period.

In examining the beneficiary's education profile, job responsibilities listed previously, along with the materials placed on the record with regard to aluminum can manufacture, the record is clear that the beneficiary has performed work for numerous years in a field requiring the theoretical and practical application of specialized knowledge required in the field of electronics technology.

Nevertheless, the remaining criteria for fulfilling 8 C.F.R. § 214.2 (h)(4)(iii)(D) have not been established. For example, according to regulatory criteria, the beneficiary's experience must be gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Although in the beneficiary's most recent job he is supervising a degreed engineer, other job listings or employer letters contain no information with regard to the educational and work-based credentials of co-workers. The beneficiary's job with Rheem Can indicates that he supervised eight mechanics and five electricians; however, there is no information on the educational credentials or work-based credentials of these workers, or of the beneficiary's supervisors, or peers. The beneficiary's job with Crown Cork Co. has the same deficiency with regard to the beneficiary's subordinates, peers or supervisors.

In addition, the petitioner has not submitted any of the documentation outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(D)(i), (ii), (iii), (iv), or (v) to establish that the beneficiary has recognition of his expertise in the electronic technology field. Without more persuasive evidence, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.