



*DR*

U.S. Department of Justice

Immigration and Naturalization Service

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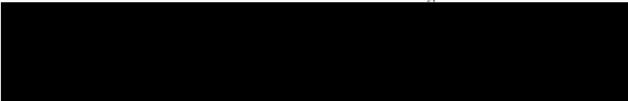


File: SRC-01-260-52084

Office: Texas Service Center

Date: FEB 10 2003

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 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*  
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 network infrastructure provider with three employees and an undisclosed gross annual income. It seeks to employ the beneficiary as an electronics 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 petitioner had not persuasively demonstrated that the beneficiary's twelve years of employment experience were the equivalent of a baccalaureate degree, or that the proffered position required a baccalaureate degree. On appeal, counsel states, in part, that the record contains two professional evaluations as evidence that the beneficiary holds the equivalent of a baccalaureate degree in electrical engineering. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an electronics engineer. Counsel further states that the duties of the offered position are sufficiently specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate degree.

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:

In this capacity [the beneficiary] will evaluate various designing methods, integrate, repair electronic hardware for computers and determine the most cost-effective plan and schedule. He will be budgeting the time required to meet established deadlines.

[The beneficiary] will also determine the labor requirements and, in some cases, supervise or monitor the hiring and dismissal of workers. He will also oversee the performance of all contractors and is responsible for ensuring all work is completed on schedule. He will direct and monitor the progress of activities, at times through other supervisors which would include the delivery and use of materials, tools, and equipment, the quality of work completed, worker productivity, and safety.

[The beneficiary] will regularly review work completed to monitor progress and ensure compliance with plans and specifications and track and control construction costs to avoid cost overruns. Based upon direct observation and reports by subordinate supervisors, he would prepare daily reports of progress and requirements for labor, material, and equipment.

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 would normally require a bachelor's degree in

electronics engineering or a related field. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 110, the Department of Labor (DOL) describes the job of an electrical or electronics engineer as follows:

Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment...However, engineers whose work is related to exclusively to computer hardware are considered computer hardware engineers...

In its Handbook at page 109, the DOL describes the job of a computer hardware engineer as follows:

Computer hardware engineers research, design, develop, and test computer hardware and supervise its manufacture and installation...

The record reflects that the petitioner, which is a network infrastructure provider, employs three persons and has an undisclosed gross annual income. The business in which the beneficiary is to be employed has not demonstrated that it requires the services of an electronics engineer or a computer hardware engineer. There is no evidence that the position offered includes complex or advanced computer hardware engineering duties such as the research, design, development, and testing of computer hardware and supervising its manufacture, or that the position requires an individual with a knowledge of sophisticated engineering techniques normally associated with the duties of a computer hardware engineer.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the duties of a computer repairer, also known as a data processing equipment repairer. In contrast to the descriptions of an electrical or electronics engineer and a computer hardware engineer, at page 475 of the Handbook, the DOL describes the position of a computer repairer/data processing equipment repairer, in part, as follows:

These repairers primarily perform hands-on repair, maintenance, and installation of computers and related equipment.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a computer repairer/data processing equipment repairer rather than an electrical or electronics engineer or a computer hardware engineer. For example, the petitioner states that the beneficiary will "evaluate various designing methods, integrate, repair electronic hardware for computers and determine the most cost-effective plan and schedule" and "supervise or monitor the hiring and dismissal of workers..." Such duties are not

normally associated with an electrical or electronics engineer or a computer hardware 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, although counsel asserts that the petitioner's current employees hold baccalaureate degrees, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as electronics engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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 a computer repairer/data processing equipment repairer, rather than an electrical or electronics engineer or a computer hardware engineer. According to the DOL at page 476 of Handbook, knowledge of electronics is necessary for employment as a computer repairer. Employers prefer workers who are certified as repairers or who have training in electronics from associate degree programs, the military, vocational schools, or equipment manufacturers. In addition, experienced workers may move into management positions responsible for supervising other repairers. 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.