

PUBLIC COPY

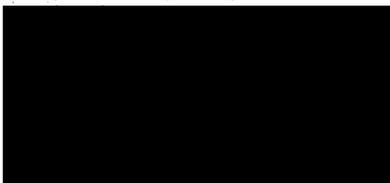


U.S. Department of Justice

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

D2

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



File: SRC-02-254-53257 Office: Texas Service Center

Date: JAN 17 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: Self-represented

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

The petitioner is a firm specializing in sales, installation, repair, rental and system integration of electronic video, navigational and communications equipment. The firm currently maintains a staff of 38 employees and has a gross annual income of \$2,500,000. It seeks to employ the beneficiary as an electronic technician for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement along with additional evidence in support of the appeal.

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 failed to establish that the proffered position was a specific specialty requiring at least a baccalaureate degree. On appeal, the petitioner argues that the beneficiary's extensive occupational experience is at least equivalent to a baccalaureate degree in the specific specialty of electrical engineering or an equivalent.

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:

- Repairs electronic equipment and systems in the field while in a predominantly unsupervised environment;

- Analyzes assesses and plans repair and service requirements and related parts and procurement needs;
- Confers with customer/client contacts and exercises good judgement in establishing the urgency and priority of repair and service needs;
- Applies related mechanical skills as required;
- Processes service tickets relative to assigned repair or service task;
- Maintains inventory records on parts and equipment issued to assigned company vehicle and monitors vehicle's maintenance and service needs; and
- Maintains accurate records of any and all expenses incurred and applied to company credit card if issued and as required.

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 electrical engineering or an equivalent. Given the duties to be performed by the beneficiary, the proffered position appears to be that of an electronics repairer of commercial and industrial equipment. In its Occupational Outlook Handbook (Handbook), 2002-

2003 edition, at page 477, the Department of Labor (DOL) describes the position of *electrical and electronics installer and repairer* as follows:

Many installers and repairers, known as *field technicians*, travel to factories or other locations to repair equipment. These workers often have assigned areas where they perform preventive maintenance on a regular basis. When equipment breaks down, field technicians go to a customer's site to repair the equipment.

Some industrial electronic equipment is self-monitoring and alerts repairers to malfunctions. When equipment breaks down, repairers first check for common causes of trouble, such as loose connections or obviously defective components. If routine checks do not locate the trouble, repairers may refer to schematics and manufacturer's specifications that show connections and provide instructions on how to locate problems....Repairers use software programs and testing equipment to diagnose malfunctions.

According to the DOL's Handbook at page 478, many applicants acquire training for an electronics repairer of commercial and industrial equipment through programs lasting one to two years at vocational schools and community colleges, although some less skilled repairers may have only a high school diploma. 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 specific specialty such as electrical engineering technology, 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 an individual with a baccalaureate degree in a specific specialty in a parallel position.

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

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.