

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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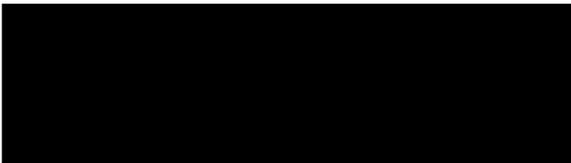


File: EAC 02 024 52436 Office: VERMONT SERVICE CENTER Date: JUL 18 2003

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:



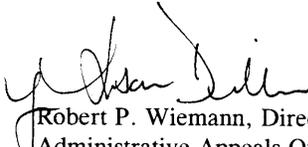
INSTRUCTIONS:

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 New York fire alarm system, and high voltage integrated circuit (HVIC) control general wiring company. It has three employees and a gross annual income of \$175,000. It seeks to temporarily employ the beneficiary as an electrical engineer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation, because the proffered position is actually that of an electrician.

On appeal, counsel asserts that the proffered job is an electrical engineer position, and submits additional documentation.

Section 214(i)(1) of the Immigration and Nationality Act (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 further 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Vermont Service Center on October 19, 2001, the petitioner described the duties of the proffered position as follows:

Determine parts supplies, maintenance tasks, safety procedure, and service schedule to maintain machines and equipment in prescribed condition.

Develop models of alternate processing methods to test feasibility of new applications of system components.

Recommend implementation of improved procedures.

Research and analyze data, such as customer design proposal, specifications, and manual to determine feasibility of design or application.

Test electrical components, equipment, and systems.

Develop application of controls, instruments, and systems for new commercial uses.

The petitioner also stated the following:

The job requires substantial experience in electrical engineering, knowledge of mathematical and physical principles. A qualified candidate shall be proficient in calculating required capacities for equipment units of proposed system as well as preparation unit design layouts and detail plans for fabricating parts and assembling system.

The petitioner also submitted an educational equivalency evaluation from Excel Evaluations, New York City. This document stated that the beneficiary's five years of study and certificate from the Ivan-Frankovsk Institute of Oil and Gas in the Ukraine with a specialty in electrical supply for manufactories [sic], cities, and agricultural facilities was the equivalent of a baccalaureate degree in electrical engineering from an accredited academic institution in the United States.

On December 14, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities and the percentage of time that the beneficiary would spend performing the specific duties each day. The director also requested more evidence with regard to whether the petitioner and other companies within the petitioner's industry required a bachelor's degree in a specific field of study for entry into the proffered position, and evidence of how many other individuals in the petitioner's business were employed in similar positions. In addition, the director requested evidence that a bachelor's degree in a specific field of study is a standard minimum requirement for the proffered position within the petitioner's business and industry. The director also requested evidence to establish that the position was a bona fide job. To establish this fact, the director requested copies of contracts entered into between the petitioner and the beneficiary, as well as any contracts with third parties that indicate what services are to be performed, the duration of the contract, the level of remuneration, and the number of hours the petitioner is to supply such services per week. Finally the director requested a copy of the petitioner's business lease, mortgage or deed for the office out of which the beneficiary would work and a certified labor conditions application (LCA).

In response, the petitioner submitted: three computer-generated purchase orders signed by the petitioner for various electrical or wiring projects; a quarterly federal tax return (Form 941) for the quarter ending on September 30, 2001 that showed wages and amounts withheld for three employees; a quarterly federal tax return for the quarter ending December 31, 2001 that showed wages and withholding information for four employees; two bank statements for the petitioner from Chase Manhattan Bank; and a certified LCA.

In its cover letter, the petitioner referenced the Department of Labor (DOL) *Occupational Outlook Handbook (Handbook)* and the *H-1B Handbook* published by the West Group to establish that the profession of engineer is a specialty occupation. The petitioner reiterated the same job responsibilities for the proffered position as presented in the initial petition.

On April 11, 2002, the director denied the petition. The director noted that the *Handbook* clearly established that an electrical engineer is a specialty occupation. The director then noted that the proposed duties of the proffered position appeared to be that of an electrician and that the position of electrician did not require a baccalaureate degree.

On appeal, counsel states that the petitioner is a new company and has no other electrical engineers as employees. Counsel indicates that, from its inception, the petitioner has performed mostly small installation jobs in the electrical, heating, ventilation, and air conditioning systems field. According to counsel, the petitioner is

trying to employ an electrical engineer to expand the amount of work and services rendered. Counsel further states that the duties listed by the petitioner require substantial experience in electrical engineering, knowledge of mathematics and physics and that the petitioner could not perform this work without hiring a specialist in engineering. Counsel then examines the differences in the work duties between electricians and electrical engineers and submits excerpts from the DOL *Dictionary of Occupational Titles (DOT)* and the *Handbook* for both jobs.

Upon review of the record, both counsel and the director have correctly noted that the position of electrical engineer is a specialty occupation. In addition the Department of Labor's (DOL) *Occupational Outlook Handbook, (Handbook)* 2002-2003 edition, on pages 104 and 110, clearly establishes that a bachelor's degree in engineering is required for almost all entry-level engineering jobs. What the record has failed to establish, however, is whether the proffered position is an engineering job, as opposed to an electrician or an engineering or electronic technician.

The evidence provided to date is not sufficient to establish that the proffered position is that of an electrical engineer. For example, there are no contracts in the record as to present or future work to be performed by the petitioner. The petitioner did submit various purchase orders for current or future jobs to be performed by the petitioner. However, with the exception of the generic phrase "furnish and install," the purchase orders contain no information as to the nature of the jobs to be performed, the amount of time needed to perform the jobs, and the technical or electrical complexity of the work to be performed. The purchase orders also provide no breakdown of labor versus parts costs that could also provide some insight into the specific nature or complexity of the work to be done by the petitioner. In sum, the record reflects no present or future work done by the petitioner that would require an electrical engineer.

The statement by counsel that the petitioner wants to perform more complicated work in the future through the employment of an electrical engineer also does not establish that the proffered position is that of an electrical engineer. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Without more persuasive evidence, the proffered position appears to be that of an electronics technician or electrician. With regard to electricians or electrical technicians, 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 proffered position, the proffered position is not a specialty occupation. Without more sufficient evidence, the petitioner has

not established the first criterion of 8 C.F.R. § 214.2 (h)(4) (iii)(A).

With regard to the second criterion of 8 C.F.R. § 214.2 (h)(4) (iii)(A), namely, that the degree requirement is common to the electrical engineering industry in parallel positions, or that the position is so unique or complex that it can only be performed by an individual with a baccalaureate degree, to the extent that the petitioner has not established that the proffered position is that of an electrical engineer, the petitioner has not established this criterion.

With regard to the third criterion of 8 C.F.R. § 214.2 (h)(4) (iii)(A), namely, that the petitioner normally requires a degree or its equivalent for the position, the petitioner has established that no other employee has previously held the proffered position. Therefore the petitioner has also not established this criterion.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4) (iii)(A), namely that 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 evidence provided by the petitioner of its business activities to date does not establish that the duties of the proffered position will be either specialized or complex. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

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.