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

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

**PUBLIC COPY**



MAR 11 2003

File: EAC 01 206 53181 Office: VERMONT SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:



**identifying cases selected to prevent clearly unwarranted invasion of personal privacy**

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 electronics service and repair company that has 7 employees and a gross annual income of \$700,000. It seeks to continue to employ the beneficiary for an additional three years as an electronics technician. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Bureau (formerly the Service) erred in denying the instant petition because the Service previously approved the beneficiary's initial H-1B visa petition.

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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

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.

In the I-129 petition filed with the Vermont Service Center on June 19, 2001, the petitioner stated that the beneficiary would work as an electronics technician. The beneficiary's duties were described as "testing and repair of cellular phones and pagers. Layout, builds, tests, troubleshoots and repairs and modifies developmental and production cellular phone components." A cover letter signed by the petitioner stated the following duties:

Lay out, tests, troubleshoots, repairs and modifies development and production of cellular phone components, parts, equipment and systems applying principles and theories of electronics, electrical circuitry, engineering mathematics, electronic and electrical testing and physics. Adjusts, calibrates, aligns and modifies circuitry and components and records effect on that performance.

On July 17, 2001, the director requested more evidence with regard to why the proffered position was a specialty occupation. The director noted that the nature of the proposed duties provided by the petitioner did not appear to involve such specialization or complexity as to require the attainment of a baccalaureate degree. The director requested a detailed statement with regard to the beneficiary's proposed duties and the percentage of time that the beneficiary would spend performing the duties each day. The director also requested documentary evidence that within the petitioner's company and industry, a bachelor's degree in a specific field of study is a standard minimum requirement for the job officered. In addition the director requested that the petitioner establish how many other individuals were employed by the petitioner in the same or similar positions, and to provide documentation on these employee's educational credentials and pay status. The director also requested a certified ETA Form 9035 Labor Condition Application (LCA) from the petitioner.

On August 23, 2001, the petitioner submitted a certified LCA dated August 22, 2001. The petitioner also submitted a copy of INS Form I-797 dated March 16, 1999 that documented the approval of the previous H-1B petition for the beneficiary. In addition the petitioner submitted documentation on the beneficiary's educational credentials.

In its cover letter, the petitioner noted the classification of electronics technician from the Department of Labor (DOL) *Dictionary of Occupational Titles (DOT)*, as well as the general description of the electronics technician classification in the DOL *Occupational Outlook Handbook (Handbook)*. With regard to the requirements for the proffered position, the petitioner stated:

The job offered, as defined within, requires the specialized application of mathematical engineering, physics and electronic theory. The knowledge required by the job offered is obtained through a baccalaureate degree in Technical Engineering. An individual without this knowledge is unable to perform the duties required in the job offered.

On February 5, 2002, the director denied the petition stating that the SVP designations found in the *DOT* description of electronic technician did not establish that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) erred in denying the instant petition because the petitioner's request was for an extension of an H-1B visa that had been previously approved by the Service.

Upon review of the record, the petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that

occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A) (1), namely that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the electronic technician position, the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 edition, examines the position and educational requirements for electronic technicians. The *Handbook*, which includes this type of employment within the engineering technician classification, states the following on page 100:

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. They may work in product evaluation and testing, using measuring and diagnostic devices to adjust, test, and repair equipment. (Workers who only repair electrical and electronic equipments are discussed in the statement of electrical and electronics installers and repairers found elsewhere in the Handbook. Many of these repairers often are referred to as electronics technicians.)

With regard to training, and other qualifications for the electronic technician position, the *Handbook* states on page 101: "[m]ost employers prefer to hire someone with at least a 2-year associate degree in engineering technology."

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 technical field, the proffered position is not a specialty occupation.

With regard to the second and third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the electronic technician industry in parallel positions, and that the employer normally requires a degree or its equivalent for its electronic technician positions, to date, the petitioner has submitted no evidence to establish either criterion.

With regard to the final criterion, 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 description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any

more specialized or complex than the duties of any other electronics technician. Without more compelling testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

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.

With regard to counsel's assertion upon appeal that the beneficiary had already received the approval of a previous H-1B petition, it should be noted that the review of appeals submitted to the Administrative Appeals Office (AAO) is done on a case-by-case basis. The Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.