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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



NOV 13 2003

FILE: WAC-02-027-56543 OFFICE: CALIFORNIA SERVICE CENTER DATE:

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:

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 Citizenship and Immigration Services (CIS) 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a recording studio that employs 29 persons and has a gross annual income of \$4 million. It seeks to employ the beneficiary as a chief studio engineer. The director denied the petition because the petitioner failed to establish that the position qualified as a specialty occupation.

On appeal, counsel submits a brief and previously submitted evidence. Counsel states, in part, that the petitioner has established that the offered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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 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.

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, the petitioner described the offered position as follows:

1. Oversee and coordinate recording studio engineering activities relating to music production and post-production including acquisition, installation, integration, and maintenance or modification of recording studio equipment and peripheral components for the company's facilities in California and Florida;
2. Utilize theoretical knowledge of electrical grounding and analog and digital circuit design principles to review and analyze layout and design of electrical and electronics circuitry for acquired equipment such as studio mixing consoles, analog tape machines
3. Configure computer systems associated with audio and recording studio equipment in Macintosh and IBM environment;
4. Evaluate recording studio needs for new audio recording equipment. . . .
5. Formulate and implement procedures for operation and maintenance of recording studio equipment and audio components;
6. Inspect, troubleshoot, and direct junior engineers and technical personnel in the testing and maintenance of recording studio equipment to ensure operational performance meets company standards and governmental rules and regulations;

7. Design and develop modification plans for existing audio recording equipment and peripheral components to improve technical performance;
8. Direct modification and testing of audio recording equipment
9. Prepare repair and maintenance schedules
10. Prepare annual budget for recording studio engineering department

The petitioner stated that candidates must hold a bachelor's degree in electrical or electronics engineering, music engineering, or a related field to perform the duties of the offered position. The petitioner also asserted that the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991) granted the offered position a specific vocational preparation (SVP) rating of 8. According to the petitioner, this rating means that, to successfully perform the offered position, a minimum of a bachelor's degree plus two years of experience in a related field are required. In addition, the petitioner stated that the 2001 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reported that a college degree in engineering is required to become a chief engineer.

On November 7, 2001, the director requested additional evidence from the petitioner. The director sought a detailed description of the work to be performed, including the specific duties, the percentage of time to be spent on each duty, its level of responsibility, and the types of professional employees supervised. The director also requested that the petitioner provide evidence to show that it satisfied at least one criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) to establish the offered position qualified as a specialty occupation.

In response, the petitioner submitted a letter that discussed the requested evidence. With respect to the offered position, the petitioner claimed that 50 percent of the beneficiary's time would be spent performing the duties in paragraphs one, six, seven, eight, and nine. About 25 percent of the time would entail performing paragraph two's duties, about 5 percent would involve paragraph three's, 15 percent would be spent on the duties described in paragraphs four and ten, and 5 percent would be spent on paragraph five's.

The letter also stated that the petitioner had satisfied criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner asserted that it satisfied the first criterion because under the *DOT*, the offered position requires a bachelor's degree plus two years in the field to perform the duties of the position, and similarly, the *Handbook* requires a bachelor's degree in engineering. Moreover, the

letter stated that there are specialized college programs that focus on the knowledge and skills required for the offered position, and this clearly indicates it is customary to require a bachelor's degree for the chief engineer position. Next, the letter stated that the petitioner's samples of Internet job postings reveal the bachelor's degree requirement is the normal minimum requirement for the offered position.

The petitioner claimed that the second criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) was established by the Internet job postings, and the fourth criterion was satisfied because the position requires theoretical knowledge of electrical grounding, and analog and digital circuit design principles.

On November 20, 2001, the director denied the petition, finding that the described duties of the offered position were analogous to those performed by broadcast and sound technicians as shown in the *Handbook*. The director referenced the *Handbook* regarding the necessary education for broadcast and sound technicians:

The best way to prepare for a broadcast and sound technician job is to obtain technical school, community college, or college training in broadcast technology or in engineering or electronics. Experienced technicians can become supervisory technicians or chief engineers.

The director maintained that the offered position's duties, and the *Handbook* demonstrate that the chief engineer position was not an occupation that required theoretical and practical application of a body of highly specialized knowledge to perform its duties. The director affirmed that the actual duties to be performed are dispositive in determining whether a position qualified as a specialty occupation, not the title of the position.

On appeal, counsel states that the petition has established that the offered position qualifies as a specialty occupation. First, counsel asserts that a bachelor's degree is the normal requirement for the offered position: the position's duties are highly complex as shown by the DOT's SVP rating of 8, which signifies that a bachelor's degree and two years of experience in a related field are normally required to perform the position. Second, counsel alleges that the *Handbook* describes the position of chief engineer as requiring a bachelor's degree in engineering. Third, counsel claims that the Internet postings, provided by the petitioner, establish the bachelor's degree requirement. And, fourth, counsel maintains that, because there are specialized college programs focusing on the knowledge and skills required for the chief engineer position, the existence of such programs indicates it's customary to require a bachelor's degree.

Counsel's statements on appeal fail to establish that the petitioner has satisfied at least one criterion under 8 C.F.R.

§ 214.2(h)(4)(iii)(A).

The first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel declares that the position satisfies this criterion: the *DOT* requires a bachelor's degree for the offered position, and the *Handbook* requires a bachelor's degree in engineering.

Counsel's declarations are groundless. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree 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 *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, Citizenship and Immigration Services (CIS) 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*.

As shown in the *Handbook* on page 135, the duties of the offered position fall within the classification of broadcast and sound engineering technicians and radio operators. Chief engineers supervise the technicians who operate and maintain broadcasting equipment. The technicians install, test, repair, set up, and operate electronic equipment.

On page 136, the *Handbook* describes the training, qualifications, and advancement for the positions of technicians and chief engineer. Essentially, the *Handbook* states that technicians require technical school, community college, or college training in broadcast technology or in engineering or electronics. For chief engineers, the *Handbook* reports that experienced technicians can become supervisory technicians or chief engineers, and that employers require a college degree in engineering to become a chief engineer at a large TV station.

Based on the *Handbook*, the offered position would not require a bachelor's degree in engineering because the petitioner is not a large TV station. It is a small recording studio that employs 29 persons. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel declares that, because there are specialized college

programs that focus on the knowledge and skills required for the chief engineer position, this clearly indicates it is customary for employers to require a bachelor's degree. Counsel's declaration is without merit. Employers do not decide what the qualifications are for a position based on whether a specialized program is offered by a college: employers determine the qualifications for a position based on the necessary level of knowledge and skill required to perform the duties of the position.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, show that the offered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner submits postings from the Internet to show that its degree requirement is common to the industry in parallel positions among similar organizations. However, the postings do not support the petitioner's claim because the companies in the Internet postings are fundamentally different in nature compared to the petitioner's company: two postings are from radio stations and one is from a TV station. The petitioner also fails to show that the offered position is so complex or unique that it can be performed only by an individual with a degree: the *Handbook* clearly explains that the offered position does not require a bachelor's degree in a specific specialty.

The record fails to show that the petitioner normally requires a degree or its equivalent for the offered position, as required by the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner establish 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 petitioner fails to satisfy this criterion because the *Handbook* clearly explains that the offered position does not require a bachelor's degree in a specific specialty, and the petitioner has not submitted evidence to counter the *Handbook's* finding.

In conclusion, the petitioner fails to establish that the offered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. The petition is denied.