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

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

File: EAC 02 142 51831 Office: VERMONT SERVICE CENTER Date: OCT 14 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)

ON BEHALF OF PETITIONER:

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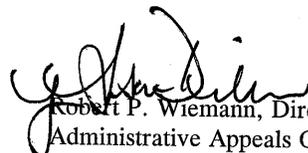
INSTRUCTIONS:

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 which 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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a news media corporation specializing in media advertising. It has 372 employees and a gross annual income of \$800,000,000. The petitioner seeks to employ the beneficiary as a chief media development engineer for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation, and that the beneficiary was not qualified to perform the services of a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of that position. In support of those assertions, counsel submits: a statement from the petitioner's human resources manager indicating that all engineers employed by the petitioner possess bachelor's degrees; and a position evaluation from Professor [REDACTED] Chair of the Department of Industrial Engineering at the University of Tennessee, indicating that the proffered position is that of an industrial engineer and requires a minimum of a bachelor's degree in engineering, or its equivalent, for entry into the position.

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, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The AAO does not simply rely on a position's title 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 AAO considers. The following job description was submitted in response to the director's request for evidence detailing the duties associated with the proffered position:

JOB DESCRIPTION

ENGINEER

Overall Description

The incumbent performs qualified engineering work. Work involves evaluating all engineering procedures to create cost effective alternatives. Work [is] conducted independently to achieve overall goals and objectives. Assignments are reviewed periodically and approved by [the] proprietor.

Specific Duties

1. Plan and coordinate activities to provide for orderly development[,] and [to] improve operating efficiency of [the] electrical power system.
2. Coordinates [sic] scheduling, conducting[,] and analysis of the system.
3. Institute preventative maintenance to ensure higher standards of efficiency.
4. Maintain the highest output to educate qualified personnel in maintenance practices.
5. Coordinate collection and analysis of operational data.
6. Evaluates [sic] systems and makes recommendations.

Experience and Education

Familiarity with engineering principles, which would be acquired through formal education: a bachelor's degree or the equivalent through work experience.

In addition to the job description set forth above, the petitioner's human resource manager provided a statement concerning the duties of the proffered position:

[The beneficiary] will work at our Company as a [q]ualified [e]ngineer. He will evaluate all [e]ngineering procedures and create cost effective alternatives. He will plan and coordinate activities to provide for orderly development and improve[d] operating efficiency of [the] electrical power system. When possible[,] he will institute preventative maintenance to ensure higher standards of efficiency and maintain the highest output to educate qualified personnel in maintenance practices. He will coordinate collection and analysis of operational [d]ata, such as, system-load demands and generating capacity.

The petitioner is a news media company which includes: Fox News Channel, 20th Century Fox, Fox Five Television, News America Marketing, Harper Collin Books, Fox Sports and numerous subsidiaries around the world. It employs over 150 individuals world wide in computer engineering, electrical engineering, electronical engineering, mechanical engineering and sound engineering. The petitioner's human resource manager states that all engineers are required to have a bachelor's degree, or its equivalent, for employment with the petitioner.

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 qualified the offered position as a specialty occupation. A position evaluation was submitted by Professor [REDACTED] who holds the position of Chair of the Department

of Industrial Engineering at the University of Tennessee. Professor Badiru reviewed the duties of the proffered position and finds that the position requires the services of an Industrial Engineer, and that a minimum of a bachelor's degree is required for entry into that position. Professor Badiru's opinion is persuasive. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 112, the Department Of Labor describes, in part, the duties of an Industrial Engineer as follows:

Industrial engineers determine the most effective ways for an organization to use the basic factors of production—people, machines, materials, information, and energy—to make a product or to provide a service. They are the bridge between management goals and operational performance. . . . Although most industrial engineers work in manufacturing industries, they also work in consulting services, healthcare, and communications.

A bachelor's degree is required for most entry level engineering positions. *Id.* at 103

As noted in 8 C.F.R. § 214.2(h)(4)(ii), an occupation that requires the theoretical and practical application of engineering principles is deemed to be a specialty occupation as it 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. For this occupation, the applicant is required to evaluate engineering procedures, develop and improve the operating efficiency of an electrical power system, develop maintenance procedures to ensure system efficiency, and coordinate collection and analysis of system data (i.e. system-load demands and generating capacity). In order to perform these duties, an employee, at a minimum, would require a bachelor of science degree in engineering or a related field. Thus, the petitioner has established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position. The petitioner has further established that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent. Accordingly, the director's comments concerning the nature of the proffered position shall be withdrawn.

Pursuant to 8 C.F.R. 214.2 (h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, a beneficiary must:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

With regard to degree equivalence, the regulation at 8 C.F.R. § 214.2 (h) (4) (iii) (D) (1) provides, in part, as follows:

- (D) *Equivalence to completion of a college degree.* For purposes of paragraph (h) (4) (iii) (C) (4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:
 - (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

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The petitioner seeks to qualify the beneficiary to perform the duties of a specialty occupation by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h) (4) (iii) (C) (4). In support of that proposition the petitioner submitted an educational evaluation from The Trustforte Corporation. The evaluation indicated that the beneficiary had attained the equivalent of a Bachelor of Science Degree in Mechanical Engineering from an accredited institution of higher education in the United States, based upon the beneficiary's

education and work experience. The petitioner did not establish, however, that the credentials evaluation tendered to establish this premise was performed by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university having a program for granting such credit based on the beneficiary's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluation is, therefore, of little evidentiary value and the petitioner has failed to establish that the beneficiary is qualified to perform the duties associated with a specialty occupation based upon his education and work experience. Accordingly, the director's determination in the issue shall not be disturbed.

The director noted in his decision that the beneficiary had failed to maintain his nonimmigrant status, and that the beneficiary's status expired prior to the filing of the I-129 petition. The director then commented that the late filing of the petition "indicates the beneficiary does not intend to leave the United States, and is attempting to prolong his stay indefinitely." The director's comment is inappropriate. The director should focus his attention on the application of law to the facts as presented by the record of proceeding.

Counsel requests on appeal, that the AAO set aside the director's decision denying the beneficiary's request for change of status. As set forth in 8 C.F.R. § 248.3(g), there is no appeal from a denial of an application for change of status on an I-129 petition. The petitioner is limited to filing with the service center a motion to reopen or reconsider the denial.

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 established that the proffered position qualifies as a specialty occupation. The director's decision to the contrary is withdrawn. The petitioner has, however, failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. The appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.