

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

DA

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



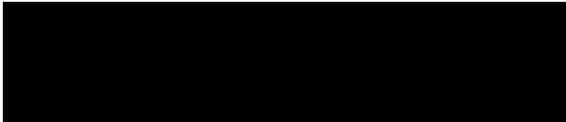
File: LIN 02 062 50158 Office: NEBRASKA SERVICE CENTER Date: **OCT 20 2003**

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:



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

The petitioner is an Illinois telephone and telecommunications equipment company. It has two employees and a gross annual income of \$100,000. It seeks to temporarily employ the beneficiary as an "electronics technician I" for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the proffered position appears to be that of a systems analyst rather than an electronics technician. Counsel submits additional documentation for the record.

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 Nebraska Service Center on December 26, 2001, the petitioner described the duties of the proffered position as follows: "The [beneficiary] will [work] on various projects which required [sic] knowledge of electronics, engineering and computer programming. He will build, test and repair and modify development of telephone network and telecommunication equipment. [The beneficiary] will maintain hardware and software [sic]. [The beneficiary] will install, configure and support telephone network[s]."

In a cover letter, the petitioner also provided the following expanded description of the position:

[The beneficiary] will work with highly qualif[ied] staff members who have been in the telecommunication industry for over thirty years. His work will consist of lay[ing] out, build[ing], repair[ing,] and modify[ing] telephone networks and telecommunication equipment. He will provide technical assistance to telephone system users concerning hardware and software. He will modify and repair existing systems.

On February 13, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed description of the beneficiary's duties. If the duties to be performed varied, the director requested that the petitioner indicate the percentage of time the beneficiary would spend performing each duty. In addition, the director requested further evidence as to how the proffered position met any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted the following description of the duties of the proffered position:

[The beneficiary] will lay out and build telephone networks and will be responsible for providing technical assistance and expertise to the company's clients with respect to telephone network software products and the internal system which support[s] the software. He will respond to the technical product

inquir[ies] telephonically, and [will] provide the required technical expertise on product usage, ensuring that [the] integrity and functionality of products are maintained. He will identify systems usage errors and instruct clients [on how] to correct such errors while maintaining sensitivity to specific client needs. He will recreate software problems, diagnose and isolate their probable cause and develop appropriate solutions. He will also identify those situations, which do not involve a problem with AmTech products but [that] may have arisen as a result of an operating system or third party vendor problem.

In addition, the petitioner provided the following description of the beneficiary's daily work routine:

His workday will start at 8 AM and end at 5 PM. There is [a] one hour lunchtime from 12 [noon] to 1 [PM]. His knowledge and experience will be [adapted] to [the] existing operation[s] of our company, which specializes in [repair], and modification of telephone network and telecommunication equipment. Currently we have to offer ROLM, IBM, Nortel, [and] NEC telephone systems to our c[us]tomers. We are in need of technicians who are familiar with designing and modification of telephone systems.

Counsel also submitted two letters from the American Telecom Corporation, Chicago, Illinois. Walter Glubisz, director, stated that a baccalaureate or higher degree was essential for the telecommunication systems technician position. Mr. Glubisz also stated his company employed three people with the same qualifications. In a second letter, Mr. Glubisz stated that the beneficiary had undertaken training with his company for three months from July to September 2000 in the field of programming of telecommunication systems such as ROLM, IBM, Northern Telecom, and NSC.

On June 10, 2002, the director denied the petition. The director stated that the proffered position appeared to be a combination of various duties and referred to the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* description of electronic sales and service technician. While the director noted that the petitioner had not submitted several documentary items previously requested by the director, the director primarily based his decision on the fact that the petitioner had not established any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner had not submitted a sufficient description of the duties of the proffered position to determine whether the proffered position was a specialty occupation.

On appeal, counsel submits the documentation previously requested by the director in his request for further evidence with regard to copies of Form IAP-66, and the proposed employment dates. Counsel

reiterates the duties of the position outlined by the petitioner previously to establish that the position is a specialty occupation. Counsel states that the job duties of the position appear to be those of a systems analyst rather than an electronics technician. Counsel provides no further documentation or analysis to support his assertions.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

On appeal, counsel refers to the proffered position as a systems analyst position; however, he provides no further analysis or evidence to support this assertion. 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). In addition, the initial description of job duties provided by the petitioner, and the expanded version of the same duties in its response to the director's request for further evidence, reiterate duties that appear quite similar to those of an electronics technician. For purposes of this proceeding, the proffered position will be considered an electronics technician.

With regard to the director's use of the DOT classification for his determination, 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.

The *Handbook*, 2002-2003 edition, examines the position and educational requirements for electronics technicians 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, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. 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 - 8 C.F.R. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for an electronics technician position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner provided a letter from American Telecom Corporation, Chicago, Illinois that stated it employed three persons in similar jobs. According to the letter's author, all three had baccalaureate degrees. No further documentation, such as the names of these employees, their duties and titles, and copies of their baccalaureate degrees was provided. As stated previously, 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, supra*. In addition, the petitioner submitted

no documentation that any professional telecommunication or telephone system programming association has made a bachelor's degree a requirement for entry into the field. Although, as previously stated, the petitioner did provide a letter from a firm ostensibly in the industry, this letter did not provide sufficient detail to establish that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel asserts that the position is a complex one. However, upon review of counsel's breakdown of duties, the same job areas, such as building, testing, repairing and modifying telephone network and telecommunication equipment, are repeated several times. These repetitive duties appear quite similar to duties outlined in the *Handbook* for electronics technicians. In the instant petition, the repetition of the same duties is not sufficient to establish this criterion. In addition, the petitioner submitted no further documentation on how much time the beneficiary would spend in performing routine duties such as installation of standardized telephone systems as opposed to less routine duties involving the design of modifications to new or existing telephone systems. Without more persuasive testimony, the petitioner did not establish the second criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The petitioner did not submit any documentation with regard to any other employees it has hired and their academic credentials.

IV. 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 - 8 C.F.R. § 214.2(h) (4) (iii) (A) (4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. As stated previously, the job description in the original petition contained work duties that are similar to any electronics technician position. In addition, the petitioner provided no further documentation with regard to the time to be spent in various duties that range from installation, design, and repair of new or existing telephone systems. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.