

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

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

File: WAC-02-031-53702

Office: CALIFORNIA SERVICE CENTER

Date: OCT 21 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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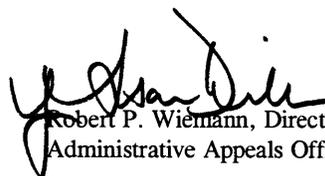
INSTRUCTIONS:

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 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a textile mill with nine employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as an electrical engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proffered position is that of an electrical engineer, a position that requires a baccalaureate degree in electrical engineering.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[H]e will be responsible for electrical/electronic hardware and software support for new functionality and reliability test process including - support for presently implemented test process; new test process definition and implementation of road map; application

of emergency solution to problems arising from rapid technological progress; test new equipment design and evaluation.

[The beneficiary] will be in charge of the continuous operation of automatic production control systems, electrical machinery and power distribution in the plant. He will perform troubleshooting duties and repair all of the equipment. Likewise, [the beneficiary] will maintain and configure the company's computer system to meet the changing needs of the company.

Additionally, [the beneficiary] will perform system protection studies and make recommendations on protective devices used for proper coordination of distribution, transmission, and substation equipment. He will create designs and project estimates for the installation of small substation projects.

Furthermore, [the beneficiary] will identify constraints and risk areas in the facility and keep management informed. He will ensure that the risk areas are minimized with parallel plans to achieve the company's goals. Also, [the beneficiary] will be tasked to provide technical leadership on performance, cost and schedule goals.

More importantly, [the beneficiary] will also devote time to implementing a system that will be available to other Electrical Engineer [sic] at the conclusion of his period of stay.

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 not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the beneficiary is an electrical engineer, an occupation that would normally require a bachelor's degree in electrical engineering or a related field. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 110, the Department of Labor (DOL) describes the job of an electrical engineer follows:

Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. . . .

The record reflects that the petitioner, which is a textile mill, employs nine persons and has a gross annual income of \$2 million. The business in which the beneficiary is to be employed does not require the services of an electrical engineer who designs, develops, tests, and supervises the manufacture of electrical and electronic equipment.

The duties that the petitioner endeavors to have the beneficiary perform are the installation, maintenance, and repair duties, which are similar to the duties that electrical and electronics installers and repairers would execute in a business establishment such as a textile mill. In contrast to the description of an electrical engineer, at page 477 of the *Handbook*, the DOL describes the positions of electrical and electronics installers and repairers, in part, as follows:

Businesses and other organizations depend on complex electronic equipment for a variety of functions. Industrial controls automatically monitor and direct production processes on the factory floor. . . . These complex pieces of electronic equipment are installed, maintained and repaired by electrical and electronics installers and repairers.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of an electrical and electronics installer and repairer position rather than an electrical engineer position. For example, the petitioner states that the beneficiary "will be in charge of the continuous operation of automatic production control systems, electrical machinery and power distribution in the plant. He will perform troubleshooting duties and repair all of the equipment. . . ." Such duties are not normally associated with an electrical engineer. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as electrical engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The Internet job advertisements submitted by the petitioner are noted. The petitioner has not established, however, that the proposed duties of the proffered position are as complex as the duties described for the advertised positions. For example, one of the positions is that of an electrical engineer whose duties include directing and training an electrical engineering group in the design and planning of electrical generation, transmission, and distribution systems. Another position is that of an electrical engineer whose duties include working with a scientific research group in developing novel laser remote sensors. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of an electrical and electronics installer and repairer position, rather than an electrical engineer. According to the DOL at pages 478 of the *Handbook*, many applicants gain the necessary training through programs lasting 1 to 2 years at vocational schools and community colleges. In addition, some less skilled repairers may have only a high school diploma. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner has not persuasively established that the beneficiary is qualified to perform the duties of a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.