

PUBLIC COPY

U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DR

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



OCT 23 2003

FILE: EAC 02 137 53834 OFFICE: VERMONT 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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an electrical company that currently employs 385 persons and has a gross annual income of \$45,000,000. It seeks to employ the beneficiary as an electrical technician for a period of three years. The director denied the petition as failing to establish that the proffered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

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.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an one 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.

The Form I-129 described the proffered position as "Electrical Technician." According to Counsel's cover letter,

The position responsibilities include: (1) install, maintain, and repair electrical installations, equipment, and fixtures according to specifications; lays out, build, test, troubleshoot, repair and modify developmental and production electric components, parts, and equipment using principles of electronics, electrical circuitry, engineering mathematics, electronic and electrical testing, and physics; (2) checks on company equipment and tools to ensure safe and efficient operation and report faulty equipment; and (3) use power tools and equipment necessary to perform assigned tasks.

Counsel's letter also stated that candidates for the proffered position required (1) completion of a four-year apprenticeship program and seven years of equivalent experience, (2) thorough understanding of and compliance with N.E.C. and local codes; (3) familiarity with high voltage safety; (4) certified completion of programs or seminars on code changes; and (5) thorough knowledge of electrical theory, mathematics, electrical construction and maintenance methods, or equivalent education and experience.

A letter from the petitioner's director of human resources contained substantially the same information as counsel's letter about the position's responsibilities and qualifying requirements, except that the director stated that the position required either a four-year apprenticeship or seven years equivalent work experience, not both.

A two-page job description on the proffered position, submitted by the human resources director, summarized the main duties of the position as installation, maintenance, and repair of electric wiring "for all electric systems," and ensuring compliance with relevant codes. This document's section on job requirements and qualifications included this statement about the necessary

background: "Must have successfully completed a four-year apprenticeship program or have seven years of equivalent work experience, or possess a valid journeyman's card." This document also stated,

- For education: "Successful completion of a 4-year apprenticeship program or 7-years of equivalent experience or possess a Journeyman card."
- For license requirements: "Journeyman license in states where required."
- For experience: "Minimum of 5-years of experience and skills acquired as 4th year Electrical Apprentice."

The director issued a request for additional evidence on the specialty occupation issue, asserting that the petition and its supporting documentation failed to establish that proffered position required a bachelor's degree in any specific specialty.

Counsel responded to the director's request by filing (1) letters from him and the petitioner's human resources director, and (2) a host of documents, apparently from the Internet, which counsel divided into two sets: "examples of SCA definitions descriptive of the wide variety of jobs and duties that may fall under the generic titles of electrician/electrical technician"; "job descriptions and postings from various locations including the Washington Post, NY Times, and Boston Times." Counsel submitted all SCA descriptions and job advertisements as supportive of the proffered position as a specialty occupation, and pointed to one of the advertisements, for an electrical equipment technician, as "completely on point" in its requirement for a bachelor's degree or equivalent.

Counsel's letter provided further details about the duties of the proffered position, stating that they also involved "application of electrical theory and related knowledge to test and modify developmental or operational electrical machinery and electrical control equipment and circuitry," and "assembling and testing switch panels, transformers, generator windings, solenoids, and other electrical equipment and components according to engineering data and knowledge of electrical principles"; "diagnosis of electrical or mechanical malfunctions or failures of operational equipment and the performance of preventive and corrective maintenance"; direction of others in routine installation and maintenance; planning, direction, and recording of periodic electrical tests; and recommendation or initiation of modification or replacement of equipment which fails to meet operating standards."

In this letter counsel asserted that the "high level of complexity and the application of a sophisticated body of knowledge" required by the proffered position mandated, as a minimum educational qualification, "completion of either an apprenticeship training program and a minimum of seven years experience or a bachelor's degree that is equivalent in a related field such as Electrical Technology." (Emphasis in original.)

Counsel added, "Although such knowledge and skills are usually found in applicants who have a high degree of training based on skill sets acquired through structured apprenticeship programs and commensurate experience, such qualifications are also obtained by thorough education and experience as in the case of [the beneficiary]."

Counsel explicitly acknowledged that the Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that there is a wide range of training and educational requirements for electricians/electrical technicians. Counsel states, however, that some electrician/electronic technician positions, such as the beneficiary's, have such specialized and complex duties that they require "apprenticeship training and experience or an equivalent bachelor's degree."

Counsel also asserts that, for an electrical technician position, the petitioner's employees typically complete a four-year apprenticeship and at least seven years of experience. According to counsel, this training and experience "equate to a bachelor's degree in Electrical Technology" and the petitioner "views a four-year apprenticeship plus seven years of experience as the equivalent of at least a bachelor's degree in Electrical Technology."

Finally, counsel points to the level of pay proposed for the beneficiary as evidence the proffered position is a specialty occupation.

Counsel's letter appears to largely adopt the reply letter of the director of human resources, which provides substantially the same information.

The substance of the denial of the petition was the director's determination that the petitioner had not established the proffered position as one that required a bachelor's degree, or equivalent, in any specific specialty.

The director referred to the *Handbook, 2000-2001 edition*, in its treatments of the electrical technician occupation at pages 96-97 and of the electrician occupation at pages 422-423. The director determined that most of the duties of the proffered position fell within the scope of those two occupations, and the director noted that the *Handbook* indicated that the usual requirement for

entry-level electricians is four to five years of training, and that electrical technicians usually begin with a two-year associate degree in engineering technology.

The director also noted that the petitioner's initial submissions did not reference any educational requirement. The director further stated that the petitioner had not strengthened its contentions by the additional information on duties that the petitioner presented in reply to the request for additional evidence: the proffered position still appeared to be a hybrid of the electrician and electrical technician occupations.

In addition, the director discounted the petitioner's claim, first voiced in the letter by the director of human resources replying to the request for additional evidence, that the petitioner had required a four-year bachelor's degree as an alternative to an apprenticeship program and additional years of experience. The director noted that the claim contradicted earlier statements of the petitioner and lacked any corroborating evidence.

The director also discounted the submitted Internet postings as demonstrating an industry standard, noting that most (1) are for higher level positions (such as senior electrical engineer, research electrical engineer, QA engineer, electrical engineer, and electronics system engineer/technician), and (2) involve duties more complex than those attributed to the proffered position. The director noted that none of the Internet advertisements for electrician or electrical technician clearly indicated a minimum requirement of a bachelor's degree in a specific specialty.

Finally, the director determined that the petitioner submitted no evidence to show that the proffered position qualifies as professional under *Matter of Portugues do Atlantico Information Bureau, Inc.*, 19 I&N Dec. 194 (Comm. 1984), that is, as stated by the director, one which "requires a standard and at least baccalaureate level of university education for practice, in which that education is used and applied, and which requires extensive autonomous application of individual knowledge to particular fact situations."

On appeal, counsel submits a brief and copies of an additional four Internet job advertisements, which were for the following positions: (1) "Project Manager Chief Technologist" involved in the manufacture of electronic devices for communications, computing, data storage, industrial equipment, and medical equipment markets (minimum education: bachelor's degree in physics or electrical engineering); (2) "Senior Electrical Technologist" whose primary responsibilities would be detailed electrical design of offshore oil and gas platforms (requires an "electrical technology diploma plus oil and gas facility design credentials); (3) "Electrical Technologist II" to collaborate with members of a research and development team in the area of display technology (educational

requirement: electrical engineering technology or applied sciences diploma from an accredited course of study or recognized equivalent); and (4) "Electrical Technologist" for "the design and field commissioning of SCADA systems including electrical circuits and instrumentation" (educational minimum: diploma or degree in electrical and/or Instrumentation technology).

Counsel's brief contends that, despite the difference in job titles (i.e., "technologist" rather than the proffered position's "technician"), the four advertisements support the petition because "they require a four year degree or its equivalent, just as the Petitioner requires for this position." Counsel also disputes the director on *Matter of Portugues do Atlantico Information Bureau*, claiming that the proffered position meets the definition of a professional because of its requirements for "combined expertise to apply electrical theory, assemble devices and diagnose problems, and analytical, practical and supervisory skills." Finally, counsel also asserts that the proffered position has a specialty occupation's "management, design, and development" duties.

The complete record has been fully reviewed to determine whether the petitioner has established the proffered position as a specialty occupation under any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A). As the following discussion of each criterion will show, the facts presented by petitioner are not sufficient to justify classifying the proffered position as a specialty occupation.

All the statements of the director in the denial of the instant petition are substantially correct.

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

The issue here is whether the duties of the petitioner's electrical technician position require, as a minimum for entry, a bachelor's degree or equivalent in a specific specialty.

The AAO looks beyond the title of the position to carefully review all the evidence relevant to the duties of the position and what exercise of these duties entails in terms of knowledge, education, special training, skills, and experience.

Counsel and the director of human resources ascribe specialty occupation qualities to the proffered position that the evidence regarding its duties does not support.

The enumeration of duties by counsel and the director of human relations do not reveal a need for the theoretical and practical application of any degree of highly specialized knowledge that would require at least a bachelor's degree in any specific

specialty. Indeed, the duties appear well within the scope of those of the electrical technician occupation as described at pages 96 and 97 of the *Handbook*, an occupation which, the *Handbook* reveals, does not typically require a bachelor's degree or its equivalent for entry-level positions.

The Internet advertisements have little evidentiary value. Many are for engineer positions far above the scope of duties of the proffered position. None of them present the same duties as the proffered position.

The SAC descriptions of many types of duties for many different electrical technician positions just indicate that the proffered position is in a general occupation that offers a wide range of positions with varying duties.

The contention of counsel and the director of human resources that the proffered position requires a four-year degree in electrical technology or a related field are without merit: it lacks supporting evidence; it is undermined by the initial submissions, including the two-page job description and the first letter from the director of human resources, which were silent on any educational requirement; and such an educational requirement is not evident in the nature of the duties.

Likewise without merit due to a lack of supporting evidence is the petitioner's assertion about its apprenticeship and additional experience requirement equating to requirement of a bachelor's degree.

Level of pay is not persuasive evidence of a specialty occupation. It is a matter of the prevailing wage and market conditions, and does not necessarily correlate with specialty occupational status under the Act.

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

The Internet advertisements submitted by the petitioner have no bearing because they relate to positions that appear too dissimilar from the proffered position to be considered parallel to it. The record is devoid of any other documentary evidence relevant to this regulatory provision.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them. In fact, the duties appear no more complex than those which the *Handbook* indicates can be performed without a four-year degree or its equivalent by either electrical technicians or electricians.

III. Degree or its equivalent as the employer's normal requirement for the position.

-8 C.F.R. § 214.2 (h) (4) (iii) (A) (3).

The record provides no evidence of a degree requirement as part of a prior hiring practice for the proffered position. The assertions of counsel and the director of human resources about having required an apprenticeship and experience equal to a bachelor's degree are without merit. 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). As the record lacks any independent basis for the petitioner's equivalency determination, its assertions about the normalcy of a degree requirement are insufficient.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

The totality of the petitioner's evidence does not establish that the specific duties are so specialized and complex that only a person with a baccalaureate degree in a specific specialty could perform them. The conclusions of counsel and the director of human resources in this area carry no weight as they are not corroborated by the evidence.

As discussed above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 14.2 (h) (4) (iii) (A). Accordingly, it is concluded that the petitioner has not established that the proffered position is a specialty occupation within the meaning of the regulations.

Aside from the director's decision, the petition here would not merit approval even if the petitioner had prevailed on the specialty occupation issue. This is because the petitioner does not present adequate evidence that the beneficiary qualifies to serve in a specialty occupation.

Despite its wording, the Globe Language Service's evaluation does not establish, for purposes of the Act, that the beneficiary holds the equivalent of a U.S. bachelor's degree in electrical engineering technology. Globe's conclusion was based, in part, on a conclusion that the beneficiary's work experience was the

equivalent of U.S. college courses. Exercising its discretion to decide the appropriate weight to accord expert-type evidence, the AAO does not recognize the opinions of educational evaluation services on the educational equivalence of work experience. Accordingly, the beneficiary does not qualify for service in a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2). Furthermore, the record lacks sufficient evidence to qualify the beneficiary under any of the other three provisions of 8 C.F.R. § 214.2 (h)(4)(iii)(C).

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.