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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 I Street, N.W.
Washington, DC 20536



FILE: SRC-02-045-50041

OFFICE: TEXAS SERVICE CENTER

DATE: OCT 29 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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

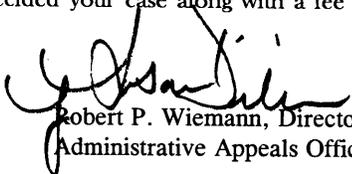
INSTRUCTIONS:

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, Texas 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 provides commercial and residential security systems. It employs 15 persons and has a gross annual income of \$711,147. It seeks to employ the beneficiary as a design engineer. The director denied the petition because the petitioner did not establish that the offered position qualified as a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states 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 initial Form I-129, the duties of the offered position, design engineer, entailed the following:

[The beneficiary] will conduct analytical studies on engineering proposals to develop design. He will also analyze product or equipment specifications and [their] performance requirements to determine designs which [sic] can be produced by existing manufacturing processing facilities and methods. Additionally, [the beneficiary] will determine feasibility of designing new equipment or modifying existing equipment [while] considering costs, available space, time limitations, company planning, and other technical and economic factors.

The petitioner stated that it is the company's policy and the industry standard to require at least a bachelor's degree in engineering to perform the duties of the design engineer.

On February 12, 2002, the director requested copies of the following: (1) a certified labor condition application; (2) an offer letter of employment to the beneficiary stating the position's salary, its terms and conditions of employment, including off-site work and required travel, and its duties in detail; (3) an organizational chart listing all employees and their respective job titles and a brief description of their responsibilities and qualifications; (4) degrees held by employees; (5) the petitioner's lease; (6) the beneficiary's degree and transcripts in their original language and a certified English translation; and (7) an evaluation of the beneficiary's academic credentials performed by a credentials evaluation service that's qualified to evaluate foreign academic programs and to determine

their equivalency to programs in the United States.

In response, the petitioner submitted the following copies: a certified labor condition application; a document entitled "First Amendment to Lease Agreement"; an organizational chart; and a bachelor's degree and its certified translation into the English language. The petitioner also provided a letter, dated March 1, 2002, and signed by its office manager that stated the following:

[The beneficiary] will hold a position with Access Security Concepts as [d]esign [e]ngineer. His annual salary will be \$44,919.00. Some of [the beneficiary's] duties will be the design, installation, [and] service and maintenance of security, access control[,] and video systems. His duties [sic] will also include the design of home automation systems.

With the position that [the beneficiary] will hold with Access Security Concepts, some traveling will be required.

On June 24, 2002, the director denied the petition, finding that the record failed to establish that the offered position qualified as a specialty occupation under one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The Immigration and Naturalization Service (Service), now Citizenship and Immigration Service (CIS) stated that it could not determine whether the duties of the offered position were engineering activities or were more similar to the duties of a technician who installs and services home and business security systems. The director stated that the petitioner's letter, dated March 1, 2002, did not establish that installing, servicing, and maintaining security systems are qualifying activities or that most design engineers would be likely to perform installations, and service and maintenance tasks. The director further stated that the petitioner's organizational chart showed that all positions require experience only; that no educational requirements of any kind were listed on the chart; and that, according to the organizational chart, experience of 10 years in the security field constituted the qualification for the offered position.

On appeal, counsel asserts that the offered position qualifies as a specialty occupation because the petitioner satisfies the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). First, counsel states that the petitioner requires that candidates hold a bachelor's degree in engineering to execute the job duties of the offered position. Second, counsel states that the director's request for evidence that other employees hold bachelor's degrees has no bearing on the duties of the design engineer. Third, counsel states that the design engineer position would require the beneficiary to analyze modalities in order to design and develop a source code to interlink the computer languages of

various modalities, and this would be interfaced by Delgado software in one computer unit. In addition, the beneficiary would create a document for technicians to execute the project. Thus, according to counsel, such duties fall under the *Dictionary of Occupational Titles'* position of electronics - design engineer, a professional position. Fourth, counsel states that it disagrees with the Service's, now CIS's, claim that the organizational chart states that the experience of 10 years in the security field constitutes the qualification for the design engineer. Fifth, according to counsel, complex security systems require that professional personnel design and install such systems, and counsel further states that one of the petitioner's projects is the design and installation of the security system of the new Houston football stadium.

Counsel's assertions are not persuasive. The offered position, design engineer, fails to establish at least one of the criteria 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) states that to qualify as a specialty occupation, a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Counsel maintains that the petitioner requires that candidates hold a bachelor's degree in engineering to execute the job duties of the offered position. Moreover, counsel asserts that the *Dictionary of Occupational Titles* states that the position of electronics - design engineer is a professional position. Thus, counsel states that the petitioner has established the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because it requires that a candidate hold a bachelor's degree in engineering.

Counsel's statement, that the offered position is a specialty occupation because the petitioner requires that candidates hold a bachelor's degree in engineering, is without merit. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position

way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388. CIS often looks to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The offered position's duties, as described in the petition and the office manager's letter, are not only vague, but are inconsistent.

With respect to the two letters signed by the company's president, one letter describes, in detail, the overall duties of the position and the other elaborately describes the duties associated with systems integration. These letters, read together, clarify and elucidate the duties of the position. In the first letter, the company president states that the beneficiary gathers the necessary security components to design and layout a system infrastructure, providing communications links between the system head and the field devices. The letter states that the beneficiary decides whether to use wire, fiber, or intranet connections for the communication links between devices, and if he uses fiber or intranet modes, he must design the system backbone to complete these tasks. After this, the letter states that the beneficiary draws the system's design, detailing wire pathways, fiber connections, breakout terminals, locations of all field devices, and the head-in configuration. Next, the letter states that the beneficiary creates the shop drawings for technicians and installers, answers questions about the systems performance, and incorporates field notes into the drawings. Finally, the letter states that, in some cases, the beneficiary would integrate all systems into one computer, and for this, he writes system protocols to interface the access control, the CCTV, the burglar alarm field, and the head-in devices. According to the letter, to do this, the design engineer must have software writing skills and a comprehensive knowledge of software platforms such as Unix, Cobol, and Basic.

In the other letter, the company president elaborates on the duties associated with the integration of systems. This letter states that the beneficiary analyzes the functions of all of the modalities and links them by writing a source code that interlinks and interfaces the modalities. To link the

must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

modalities, such as access control (ID cards), closed circuit television, intercom, burglar alarm and heating, and ventilation and air conditioning, the letter states that the beneficiary needs to understand software languages such as COBAL, UNIX, and Delgado. Last, according to the letter, the beneficiary documents the specifications that will be used by field technicians to execute the security system.

Based upon the detailed description of the duties of the design engineer as presented in the company president's two letters, and the clarification these letters bring to the petition and the office manager's letter, the record shows that the duties of the offered position fall within the scope of those duties performed by electricians and electrical and electronics installers and repairers.

According to the 2002-2003 edition of the *Handbook*, on page 453, electricians install, connect, test, and maintain electrical systems for a variety of purposes, including climate control, security and communications. Furthermore, the *Handbook* states the following:

Electricians work with blueprints when they install electrical systems . . . Blueprints indicate the locations of circuits, outlets, load centers, panel boards, and other equipment. . . . In factories and offices, they first place conduit (pipe or tubing) inside designated partitions, walls, or other concealed areas. They also fasten to the wall small metal or plastic boxes that house electrical switches and outlets. They then pull insulated wires or cables through the conduit to complete circuits between these boxes.

Regardless of the type of wire used, electricians connect it to circuit breakers, transformers, or other components. They join the wires in boxes with various specially designed connectors.

In addition to wiring a building's electrical system, electricians may install coaxial or fiber optic cable for computers and other telecommunications equipment . . . electricians install telephone systems, computer wiring and equipment, street lights, intercom systems, and fire alarm and security systems.

In addition, on page 454, the *Handbook* states that electricians also learn to set up and draw diagrams for entire electrical systems, and they may receive specialized training in communications.

On pages 477 and 478, the *Handbook* states that electrical and

electronics installers and repairers install, maintain and repair complex electronic equipment. This equipment ranges from industrial controls that automatically monitor and direct production processes to radar and missile control systems to electronic equipment that operates and controls generating plants and substations. Electrical and electronic installers often fit older manufacturing equipment with new automated control devices. Installers replace old electronic control units with new programmable logic controls (PLC) that control the equipment. Setting up and installing a new PLC involves connecting it to different sensors and electrically powered devices and writing a computer program to operate the PLC. Repairers service equipment when it breaks down, first checking for common causes of trouble, and if routine checks do not locate the problem, they refer to schematics and manufacturers' specifications that show connections and provide instructions on how to locate problems.

The duties performed by the offered position resemble those performed by electricians. Both the electrician and the design engineer set up and draw diagrams for entire electrical systems, indicating the locations of circuits, outlets, load centers, panel boards, and other equipment. Both decide where to place conduit (pipe or tubing), where to fasten to the wall small metal or plastic boxes that house electrical switches and outlets, where to lay insulated wires or cables through the conduit to complete circuits between the boxes, and where to install coaxial or fiber optic cable for computers and other telecommunications equipment. Both the design engineer and the electrician install telephone systems, computer wiring and equipment, intercom systems, and fire alarm and security systems.

The duties of the design engineer are also reflected in the duties performed by electrical and electronics installers and repairers. According to the office manager's letter, the design engineer will design, install, and service and maintain security, access control, and video systems. According to the *Handbook*, electrical and electronics installers and repairers install, maintain, and repair complex electronic equipment that ranges from industrial controls that automatically monitor and direct production processes to radar and missile control systems to electronic equipment that operates and controls generating plants and substations. One of the company president's letters describes the design engineer's duties associated with integrating systems such as writing source code. The *Handbook* states that electrical and electronic installers fit older manufacturing equipment with new automated control devices and installers replace old electronic control units with new programmable logic controls (PLC) that control the equipment. Setting up and installing a new PLC, the *Handbook* states, involves connecting it to different sensors and electrically powered devices and writing a computer program to operate the PLC. Thus, both the design engineer and the electrical and electronic installers write computer programs to link components and equipment. Most

important, the equipment that the design engineer is responsible for, such as access control (ID cards), closed circuit televisions, intercoms, burglar alarms, and heating, and ventilation and air conditioning systems, is far less complex and sophisticated compared to the equipment that electrical and electronic installers are responsible for installing and maintaining.

The *Handbook* states, on pages 453 and 454, that most electricians learn the electrical trade by completing a four-or five-year apprenticeship program, and some electricians learn on the job. The typical apprenticeship program consists of 144 hours of classroom instruction each year, and 8,000 hours of on-the-job training over the course of the apprenticeship. In the classroom, apprentices learn blueprint reading, electrical theory, electronics, mathematics, electrical code requirements. They also learn to set up and draw diagrams for entire electrical systems, and they may receive specialized training in communications.

According to the *Handbook*, on page 478, installers and repairers gain training through programs lasting one to two years at vocational schools and community colleges, although some less skilled repairers may have only a high school diploma. Entry-level repairers may work closely with more experienced technicians who provide technical guidance. Experienced repairers with advanced training may become specialists or troubleshooters who help other repairers diagnose difficult problems and workers with leadership ability may become supervisors of other repairers.

Based on the *Handbook*, the design engineer position would not require a bachelor's degree or its equivalent as the normal minimum requirement for entry into the offered position. Thus, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Furthermore, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations or that the position is so complex or unique that it could be performed only by an individual with a degree. The petitioner submits as evidence a letter, dated July 25, 2002, and signed by the manager of COMPAQ's Technical Security Services. The letter states that the design of a security system is typically performed by an "engineer level person who not only understands the installation process but also the technical operation of systems and circuitry." The language "engineer level person" is vague and may not mean that the "engineer level person" actually holds a bachelor's degree in engineering. Although relevant, the letter from COMPAQ is inadequate in itself to establish that the offered position requires a bachelor's degree in engineering. Moreover, the record does not contain any evidence, except for this letter, to establish an industry standard. Finally, the offered position is not as complex as the position performed by electrical and electronics installers and repairers. According to the *Handbook*,

they install, maintain, and repair sophisticated electronic equipment such as radar and missile control systems. Because the complexity of their position is far superior to that of the offered position, and electrical and electronics installers and repairers do not require the attainment of a bachelor's degree, likewise, the complexity of the offered position would not require a bachelor's degree. Therefore, the petitioner fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states that the employer normally requires a degree or its equivalent for the position. On appeal, counsel asserts that the director's request for evidence, that would show that other employees hold bachelor's degrees, has no bearing on the duties of the design engineer. Counsel's assertion is without merit because the director's request is designed to elicit whether the petitioner has a past practice of employing candidates possessing a bachelor's degree. Moreover, the petitioner had stated, in its support declaration that was submitted with the petition, that it is company policy and the industry standard to require at least a bachelor's degree in engineering to perform the duties of the design engineer. A review of the record fails to prove that the petitioner has a past practice of employing candidates possessing a bachelor's degree in engineering. As shown in its organizational chart, the petitioner's qualification for a design engineer position is 10 years of experience in the security field.

Counsel maintains that it disagrees with the Services's, now CIS's, claim that the organizational chart states that the experience of 10 years in the security field constitutes the qualification for the design engineer. Counsel's statement is groundless. The petitioner's organizational chart lists several columns: employee, position, description, and qualification. Under the heading "employee" the petitioner's organizational chart shows an incumbent's name, and the title "design engineer" is shown beneath the heading "position," and under the heading "description" is the position's description: design and install security and access control systems. Under the heading "qualification" the stated qualification is "10 years experience in the security field." The organizational chart clearly shows that the required experience for the offered position is 10 years experience in the security field.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) states 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. Counsel insists that complex security systems require that professional personnel design and install such systems, and counsel further states that one of the petitioner's projects is the design and installation of the security system of the new Houston football stadium. Counsel's assertion is unpersuasive. The *Handbook*

states that electrical and electronics installers and repairers install, maintain, and repair complex electronic equipment such as radar and missile control systems. The *Handbook* states they do not hold a bachelor's degree; instead, electrical and electronics installers and repairers gain training through programs lasting one to two years at vocational schools and community colleges, although some less skilled repairers may have only a high school diploma. Given that missile and radar control systems are much more complex and sophisticated compared to commercial and residential security systems, the petitioner has failed to provide sufficient evidence to show why a bachelor's degree is required for its position of design engineer.

The petitioner has failed to establish any of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Consequently, 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.

ORDER: The appeal is dismissed. The petition is denied.