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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: EAC-02-041-53335

OFFICE: VERMONT SERVICE CENTER

DATE:

**OCT 29 2003**

IN RE: Petitioner:  
Beneficiary:

[REDACTED]

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:

[REDACTED]

**PUBLIC COPY**

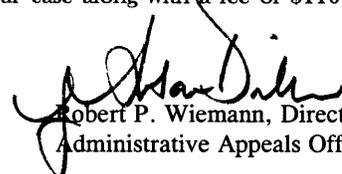
**INSTRUCTIONS:**

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, Vermont 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 is a sports park that employs four persons and has a gross annual income of \$485,996. It seeks to employ the beneficiary as a maintenance associate. The director denied the petition because the petitioner failed to establish that the offered position qualifies 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 petitioner described the offered position, maintenance associate, in the following manner:

[W]ill apply theory and principles of [e]lectronics [t]echnicians, will review equipment instructions and operation manuals to ascertain proper equipment performance. Will supervise test proceedings, will trouble shout [sic] equipment and will assist [the] maintenance manager in the [sic] maintenance and problem prevention activities. Will assist in the assembling and disassembling [sic] and dissembling [sic] of equipment, ensuring proper operations and performance. Will remain on-site while equipment is functioning during fairs.

The petitioner states that candidates for the position must be proficient in the Spanish language and possess a bachelor's degree or equivalent in electrical engineering.

On January 8, 2002, the director requested additional evidence: a copy of the job posting for the offered position; evidence that would show the petitioner had employed previous workers with a degree in the offered position; copies of job postings for the offered position which have been publicly circulated by comparative companies indicting that qualified candidates possess a combination of education, specialized training, and/or professional level experience that is equivalent to training acquired by the attainment of a U.S. bachelor's degree or higher in the occupation; documentation establishing that the petitioner employs persons in similar positions who hold at least a bachelor's degree or equivalent combination of education, training, and professional experience; published material from professional publications, books, or major newspapers substantiating that the offered position

is a specialty occupation; and documentation issued by peers in the industry that support the claim that the position qualifies as a specialty occupation. Finally, evidence that would show that the petitioner and its industry require a bachelor's degree in a specific field of study as a minimum requirement for the offered position; and, for this, the director specifically requested an evaluation by a recognized professional establishing the claim that the position qualifies as a specialty occupation and the evaluator should include an outline of his/her credentials corroborated by accompanying documentation. The director noted that this would be the most persuasive evidence.

In response, the petitioner submitted a copy of the labor condition application which served as its job posting; an evaluation performed by Timothy L. Foutz, professor and coordinator of undergraduate engineering programs at the University of Georgia, and his detailed resume. The attorney's letter stated the following: the petitioner has not employed any previous workers with a degree in the offered position; the maintenance associate needs to be responsible for the performance of a facility open to the public which includes heavy amusement equipment and office and building equipment; the sports park is a four season facility and it requires seasonal changes to equipment, inventory and settings; and the beneficiary serves as a liaison between the petitioner and other staff in the technical department and will represent the company in meetings and negotiations with suppliers, distributors, and business partners, would be able to make binding decisions on the company's behalf.

On February 27, 2002, the director, for a second time, requested additional evidence. The director stated that the petitioner had not shown that the offered position qualified as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director requested a detailed statement that described the position's duties, specified the duties associated with the attainment of a bachelor's degree, and detailed the percentage of time spent performing each duty.

In addition, the director requested evidence that would show: companies in the petitioner's industry have the same bachelor's degree requirement for the same kind of position; and the petitioner has a past practice of hiring candidates that meet the offered position's bachelor's degree requirement; a realistic job offer exists such as contracts between the petitioner and the beneficiary or the petitioner and third parties; why the petitioner requires additional employees; and, that the company has sufficient work and resources for the specialty occupation.

In a response dated March 29, 2002, the petitioner submitted the following description of the duties of the offered position as follows:

- Design, setting [sic], programming [sic], [and] test and maintenance [sic] of [sic] complex electrical and mechanical circuits and equipment;
- Responsible for the excellent performance of mechanical and electrical equipment, including installation, upgrades and inventory control, in accordance with the activities programmed for each season;
- Prepare and study technical drawings and specifications of electrical systems, including control systems;
- Serve as liaison with Spanish speaking employees, customers[,] and foreign team correspondence[,] and visitors;
- Supervision [sic] of [sic] the technical staff and sub-contractors, during the manufacturing and installation of electrical equipment, components[,] and systems;
- Programming [sic] and maintenance of the corresponding computer system, by verifying the correct function of the program's routines applicable to our equipment;
- Maintenance of the control system of all [of] the equipment and machinery. The control system of this equipment is an electronic circuit with electronic contacts and power relays that suffers continuous [sic] damage due to the weather.

The petitioner also submitted an evaluation of the position by Professor [REDACTED] a letter dated March 15, 2002 from the petitioner's majority shareholder; 10 Internet job postings; an employment agreement between the beneficiary and the petitioner; a subcontract agreement; and a copy of the petitioner's federal income tax return for the year 2000. The letter from the petitioner's attorney stated that the petitioner had never employed a person possessing a bachelor's degree in the offered position.

On April 5, 2002, the director denied the petition, finding that the offered position did not qualify as a specialty occupation. The director stated that the record showed that the petitioner's business, a small sports park, employed four persons. According to the director, the petitioner had failed to provide evidence that would show: (1) it had a past practice of hiring candidates possessing bachelor's degrees to fill the maintenance associate position; (2) why it required a professional maintenance associate; and (3) that others in the industry also required a bachelor's degree for the offered position. With respect to the evidence, the director stated that Professor [REDACTED] letter was insufficient to prove that the industry required a bachelor's degree, and that the Internet postings did not prove that a bachelor's degree is common in the industry because the jobs in the postings were dissimilar from the position of maintenance

associate. Last, the director stated that the offered position's duties were not unique.

On appeal, counsel asserts that the position qualifies as a specialty occupation. Counsel states that in the industry the job title of maintenance associate is a specialty occupation requiring a bachelor's degree. Counsel also maintains that the offered position arose because of the petitioner's plan to expand its business. Counsel states that, according to the petitioner's Executive Summary, the petitioner may decide to build and operate an outdoor soccer facility, and provide electronic and arcade games, and laser tagging. Next, counsel asserts that the new installations will be complex as will the change of equipment, inventory, service facilities, and mechanical and electric settings, in accordance with the seasonal change of activities. Further, counsel asserts that the beneficiary will design and supervise the installation and deployment of the equipment, and counsel provides a detailed description of the machinery and equipment.

Counsel's assertions on appeal are not persuasive. The record fails to show that the offered position qualifies as a specialty occupation.

Counsel declares that in the industry the job title "maintenance associate" is a specialty occupation requiring a bachelor's degree. Counsel's declaration is without merit because 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 AAO looks to the Department of Labor's Occupational Outlook Handbook (the *Handbook*) for guidance.

According to the 2002-2003 edition of the *Handbook*, the offered position's duties closely resemble those performed by electrical and electronics installers and repairers. On pages 477 and 478, the *Handbook* states that businesses depend on complex electronic equipment for a variety of functions and electrical and electronics installers and repairers install, maintain and repair such equipment. This equipment ranges from radar and missile control systems to electronic equipment to operate and control generating plants, substations, and monitoring equipment. When equipment breaks down, the *Handbook* states that repairers check for common causes of trouble, and if routine checks do not locate the problem, repairers may refer to schematics and manufacturers' specifications that show connections and provide instructions on how to locate problems. According to the *Handbook*, electrical and electronic installers often 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. The *Handbook* states that 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.

The duties associated with the maintenance associate position: setting, programming, testing, and maintenance of complex electrical and mechanical circuits and equipment; studying technical drawings and specifications of electrical systems; and programming and maintaining the computer system, all fall within the scope of those duties detailed in the *Handbook* for electrical and electronics installers and repairers.

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, the *Handbook* states, may work closely with more experienced technicians who provide technical guidance, and experienced repairers with advanced training may become specialists or troubleshooters who help other repairers diagnose difficult problems. According to the *Handbook*, workers with leadership ability may become supervisors of other repairers.

Based on the *Handbook*, the maintenance associate 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 has provided Internet postings; however, the industries are not the same as the petitioner's and the duties of the postings are dissimilar from the duties of the maintenance associate position. For example, the most similar position is for a manager -quality assurance, inspection and process for Walt Disney. However, this posting reads that the position involves managing quality assurance inspection property-wide; thus, the properties, equipment, and grounds involved are far more diverse and extensive than the petitioner's small sports park. The other postings are for positions in the manufacturing and energy industries; thus, they differ from the petitioner's industry. Consequently, the petitioner fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the maintenance associate position is newly created; the petitioner has not established a past practice of normally requiring a degree.

The record does not show that the nature of the specific duties of the offered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree - as required under the fourth criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The company's expansion plan is to build and operate an outdoor soccer facility and purchase new equipment. This expansion would not prove that the offered position is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree. The *Handbook* describes electrical and electronics installers and repairers as installing, maintaining, and repairing complex electronic equipment that ranges from radar and missile control systems to electronic equipment that operates and controls generating plants and substations. The *Handbook* states that electrical and electronics installers and repairers perform their duties without having attained a bachelor's degree; instead, they gain training through programs lasting one to two years at vocational schools and community colleges. Given that missile and radar control systems are far more complex and sophisticated compared to a soccer facility and electronic and arcade games, the petitioner has failed to provide sufficient evidence to show why a bachelor's degree is required for its position of maintenance associate.

Professor [REDACTED] letter, although relevant, is inadequate in itself to establish that the maintenance associate position qualifies as a specialty occupation. Professor Foutz states that the job description of maintenance associate qualifies as a specialty occupation that requires an individual with a bachelor's degree in a technology related field. However, the knowledge required to perform the duties of the offered position, maintenance associate, would not exceed the knowledge of electrical and electronics installers and repairers who install, maintain, and repair sophisticated electronic equipment such as radar and missile control systems. Because the knowledge required to perform the duties of electrical and electronics installers and repairers does not require the attainment of a bachelor's degree, likewise, the knowledge to perform the duties of the maintenance associate would not require a bachelor's degree.

The petitioner's requirement that the candidate is fluent in the Spanish and English languages fails to establish that the position qualifies as a specialty occupation. The *Handbook* states, on page 596 of the *Handbook*, that interpreters and translators prepare for their position through long-term on-the-job training.

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.