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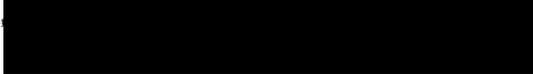


U.S. Department of Homeland Security  
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Washington, DC 20529

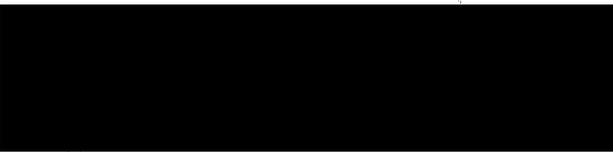
U.S. Citizenship  
and Immigration  
Services



FILE: WAC 02 285 52020 Office: CALIFORNIA SERVICE CENTER Date: **AUG 03 2004**

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 of the Administrative Appeals Office 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.



*to* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition 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 an engineering consulting firm that specializes in mechanical and electrical engineering designs and renders CADD consulting services. It seeks to employ the beneficiary as an electrical design engineer, and endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, 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 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:

[A]n 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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence; (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an electrical design engineer. Evidence of the beneficiary’s duties was included with the I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: design air conditioning systems to meet the requirements of clients (15 percent of the time); provide calculations, research, inspection and other engineering requirements of projects, including project support (20 percent of the time); conduct research and design preliminary electrical systems and drawings of projects for clients (20 percent of the time); prepare specifications, estimate costs, and conduct energy audits for clients (10 percent of the time); make computations to determine the efficiency of the type and arrangement of electrical circuits/size, type, and pieces of equipment needed on specific projects, including but not limited to transformers, circuit breakers, and switches (20 percent of the time); and use computer-assisted engineering and design software to perform design engineering tasks (15 percent of the time). The petitioner requires a minimum of a bachelor’s degree in electrical engineering for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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.” See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The petitioner contends that the proffered position is essentially that of an electrical or electronics engineer. The duties of the position, however, do not support that contention. Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. The position offered to the beneficiary does not involve the design or manufacture of equipment, but the design of lighting, heating and air conditioning systems to be installed in buildings. More specifically, the beneficiary would not participate in the actual design or manufacture of the equipment to be installed, but would design the layout and installation of purchased systems according to the needs and specifications supplied by the client. The duties of the proffered position are more closely related to those noted for electrical and electronic engineering technicians as defined in the *Handbook*. The *Handbook* notes that although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a two year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, public and private vocational-technical schools, and in the armed forces. It is, therefore, apparent that a baccalaureate or higher degree is not normally the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this criterion the petitioner submitted a listing of four of its competitors showing the percentage of "designers" holding engineering degrees that had been hired within the past five years. The petitioner states that 80 percent of one competitor's designers had an engineering degree, 70 percent of a second competitor, 60 percent of a third competitor, and 50 percent of a fourth competitor. The petitioner submits no documentary evidence in support of these assertions. The petitioner must do more than simply make assertions on the record without supporting documentary evidence to sustain its burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Its statements in this regard are, therefore, of little evidentiary value. Even assuming that the petitioner's assertions are accurate, the evidence submitted does not establish the referenced criterion. The evidence indicates that some engineers are hired for the proffered position (only 50 percent in one example, and 80 percent in the example most favorable to the petitioner's contention). The evidence does not show that a degree requirement is the normal minimum requirement throughout the industry, or even with the four competitors listed.

The petitioner does not assert that it normally requires a degree or its equivalent for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor has it established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties of the offered position are routine in the industry for electrical and electronic engineering technicians. The petitioner has, therefore, failed to satisfy the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a

specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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