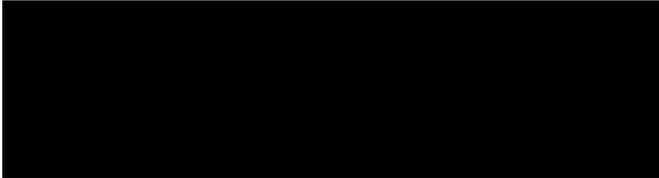


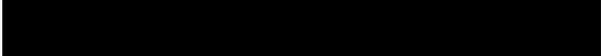


U.S. Citizenship  
and Immigration  
Services

*Handwritten initials or mark*



FILE: WAC 03 128 52954 Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2004**

IN RE: Petitioner:   
Beneficiary: 

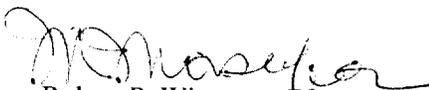
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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Identifying data deleted to  
prevent clearly unwarranted  
disclosure of personal information

**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 a musical parts manufacturer firm that seeks to employ the beneficiary as a musical systems analyst. The petitioner endeavors to classify the beneficiary 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 other documentation.

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.

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.

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 proceeding 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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a musical systems analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 17, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: analyzing preliminary specifications and designs in light of manufacturing limitations, availability of parts and equipment, and budgetary limitations; analyzing problems and developing solutions; evaluating system performance; and overseeing completion of product designs. The petitioner indicated that a qualified candidate for the job would possess a bachelor of science degree with an emphasis on music.

The director found that the proffered position was not a specialty occupation, because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel states that the proffered position is so specialized and complex that the knowledge required to perform the proposed duties is usually associated with a bachelor's degree. Counsel also claims that the evidence demonstrates that there is an industry standard minimum requirement of a bachelor's degree in a specific specialty for entry into the proffered position.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as counsel contends on appeal that a degree requirement is common to the industry in parallel positions among similar organizations. The record contains four Internet job postings for audio systems engineers. There is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The AAO notes that three of the companies issuing those announcements require candidates to possess a bachelor's degree in engineering, and one company does not specify a required field of study. The petitioner requires the incumbent to hold a degree in music, which is a completely different specific specialty from engineering. Thus, the advertisements have little relevance.

The AAO now turns to the other criterion addressed by counsel on appeal, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 job duties listed are general and vague and do not lead to any clear conclusion regarding an appropriate specific specialty requirement. The petitioner stated that the beneficiary would analyze technical data, specifications, and designs, and would perform an acoustic evaluation of system performance. The beneficiary would also analyze problems, develop solutions, and oversee the completion rate of product designs. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in the field of music. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

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