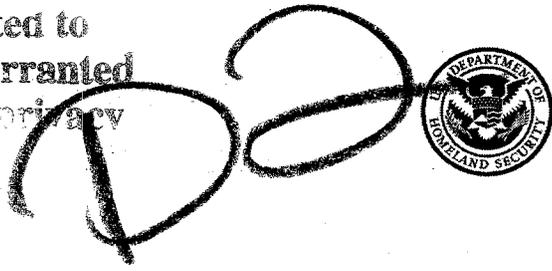


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**U.S. Citizenship
and Immigration
Services**



FILE: WAC 02 031 57149 Office: CALIFORNIA SERVICE CENTER Date: **MAY 04 2004**

IN RE: Petitioner: [Redacted]
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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Mari Johnson

RP 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 corporation engaged in the operation of an Avionics Service Center. In order to employ the engineer as an electronics/aviation engineer, 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 on the basis that the proffered position is not a specialty occupation.

The director was correct to deny the petition, as the record does not establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In reaching this decision, the AAO considered the entire record, including: (1) the Form I-129 and its supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's brief.

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.

On appeal, the petitioner submits a brief in the form of a three-page letter, submitted by the petitioner's president, which asserts that the director misapprehended the nature of the proffered position. The petitioner's contention that the proffered position is a *bona fide* engineering position is fairly captured in this excerpt from the president's letter:

Contrary to your accusations, we did not choose a job title for [the beneficiary] in order to classify him for the position in the H-1B field, but rather retained [him] to work for us

addressing the complex and specialized tasks which are typically performed by engineers, with some slight overlap to the work which is performed by technicians. Even then, when there is an actual overlap, which we agree occurs frequently, the overlapping duties are duties which are performed on a substantially different level. A level which is in many instances beyond the comprehension of a typical mechanics and aviation technicians. [The beneficiary] is a highly qualified professional.”

The petitioner’s appellate assertions are not persuasive because they are not supported by the evidence in the record of this proceeding. 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).

The petitioner and the director have different assessments of how the proffered position fits within the occupations outlined at the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. The totality of the evidence supports the director’s finding to the effect that the proposed duties comport with those of aircraft and avionics equipment mechanics and service technicians as described in the *Handbook*. Contrary to the petitioner’s perspective, neither the repair manual on autopilot and flight guidance computers, the brochures on electronics systems, the brochure about the petitioner, the descriptions of the proposed duties, nor any other evidence of record substantiates the petitioner’s contention that the proffered position accords with engineer positions as described in the *Handbook*.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is not satisfied. To the extent that it is described in the record, the proffered position fits within the *Handbook’s* occupational category of aircraft and avionics equipment mechanics and service technicians. The evidence of record does not refute the *Handbook’s* information that this occupational category does not normally require at least a baccalaureate or higher degree in a specific specialty, or the equivalent.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry’s 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/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)). The record lacks such evidence.

Next, the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “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.” On the totality of the evidence, the proffered position appears to be no more complex or unique than would be generally expected from aircraft and avionics equipment mechanics and service technicians, who are not normally required to have a degree in engineering or any other specific specialty. The petitioner’s contentions to the contrary are not supported by the evidence of record about the position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not a factor, as this is the first time the petitioner has proffered the position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – 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. To the extent that they are described in the record, the proposed duties indicate no such complexity or specialization. Rather, as earlier discussed, the duties are the type performed by persons without a baccalaureate or higher degree in engineering or any other specific specialty.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.