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U.S. Citizenship
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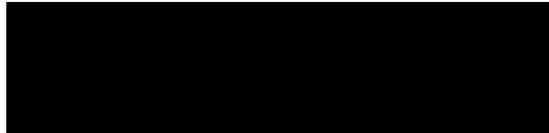
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FILE: WAC 04 127 54801 Office: CALIFORNIA SERVICE CENTER Date: DEC 01 2005

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

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 and electrical contracting firm that seeks to employ the beneficiary as an electrical engineer. It 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position 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 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 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 proceeding before the AAO contains: (1) the 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 engineer. Evidence of the beneficiary’s duties was included with the Form I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would:

- Monitor electrical installation operations and coordinate the activities of different departments to achieve given business objectives and ensure sustainable growth;
- Manage the implementation of project objectives and operational plans and improve engineering and operational processes;
- Lead team technicians to provide the total solution to the customer;
- Supervise technicians performing survey, data verification/collection, site preparation, equipment installation, equipment verification and test recognition and response to network faults, restoration of service, preventive maintenance and corrective maintenance, and repair activities;
- Prioritize tasks and ensure high level issues are resolved quickly;
- Supervise installation and maintenance technicians and ensure performance of quality management systems;
- Supervise the performance of technicians and administrative staff;
- Perform and manage installation, integration, testing, configuration, management, cut over and maintenance of inter-facility telecommunication and security systems;
- Manage processing of works planning, coordination and performance of site preparation equipment, installation testing, cut over and acceptance at operational facilities;

- Develop approaches with a multi-functional engineering team and technicians environment, and interface effectively with program and engineering management;
- Work with high level languages in computers, such as MS Word, Excel, Power Point and AutoCAD;
- Develop strategies to expand the company's market share and develop new client relations;
- Increase technician productivity and performance;
- Develop process control and business expansion strategies; and
- Establish sales goals in the operational area.

The petitioner requires a minimum of a bachelor's degree, or its equivalent, in electrical engineering, industrial engineering, or a related field for entry into the offered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 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 inspection, maintenance, testing, installation, and repair of security equipment/systems manufactured by other entities. The duties of the proffered position are more closely related to those noted for engineering technicians as defined in the *Handbook*, with some additional management/administrative responsibilities. Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and more practically oriented than that of scientists and engineers. The petitioner's business involves the sale and installation of security systems for various entities. The duties associated with these business objectives are more closely aligned with those of engineering technicians/managers, not electrical engineers. 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).

It should further be noted that the *Handbook* states that the median annual income for electrical engineers was \$68,180 in 2002, with the middle 50 per cent earning between \$54,550 and \$84,670, and the lowest 10 per cent earning less than \$44,780. The beneficiary would earn \$31,200 annually working in the offered position. This salary level is consistent with the income earned by the lower end of the middle 50 per cent of electrical and electronics engineering technicians, which ranges from \$33,760 - \$53,200. While the salary level to be paid does not determine whether a position qualifies as a specialty occupation, it is one factor to consider when assessing the complexity of duties to be performed in a particular position.

The position offered to the petitioner also contains some managerial/administrative/marketing responsibilities. The duties described in this regard are routine for managers/administrators and marketing/sales personnel. The *Handbook* does not require a baccalaureate degree in a specific specialty for the performance of these duties.

The petitioner states that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, and in support of that assertion submits job advertisements for electrical engineers. These advertisements are, however, of little evidentiary value as it has been determined that the offered position is not that of an electrical engineer. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for entry into the proffered position, as this is the first time that it has sought to employ an engineer to perform the duties of the position. The petitioner's President/General Manager previously performed these duties, and the record does not reflect that he holds an engineering degree. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 with management responsibilities, and are normally performed by individuals with less than a baccalaureate level education. The petitioner has failed to satisfy the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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.