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U.S. Citizenship
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Services

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FILE: WAC 00 092 50817 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2005

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:



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 nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a clinical laboratory that is serving hospitals and physicians in the surrounding community. It desires to employ the beneficiary temporarily in the United States on a part-time basis as a biomedical electronics engineer, at a salary of \$21.00 per hour, for three years. The director found that the proffered position, which is primarily that of an electronic equipment repairer, was not a specialty occupation because the proposed duties are not so specialized and complex as to require a bachelor's degree. The director found further that 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, in part, that the duties of the proffered position are those of an electronics engineer, and that the director ignored the sensitive nature of the position requiring maximum accuracy from equipment for a clinical laboratory serving hospitals and physicians. Counsel also states that Citizenship and Immigration Services' (CIS) classification of the position, as a simple electronics repairer is an inaccurate assessment of the job duties that are consistent with those of an electronics engineer.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1) . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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.

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-290B and supporting documentation; (2) the director’s denial letter; and (3) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary’s services as a biomedical electronics engineer. In determining whether a position qualifies as a “specialty occupation” for purposes of nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

As presented by the petitioner, the duties of the proffered position consist of the beneficiary locating and analyzing the problems in the various biomedical equipments and devising or modifying as necessary and repairing and providing preventative maintenance to ensure that the machines work as required. The beneficiary’s specific duties include responsibility for the installation, maintenance, commissioning and repair of equipment; performing upgrades on the equipment; coordinating with the suppliers and developing upgrade procedures; training the users of the machines on how to adjust and maintain the machinery; repair worn or defective parts as needed; design alterations to the system as required; visually inspect and listen to the machines to locate causes of malfunctions; dismantle the machines to gain access to the problem area using hand and power tools; and inspect and measure parts to detect wear, misalignment or other problems.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

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 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. 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 its information about the duties and educational requirements of particular occupations. The *Handbook*, 2004-05 edition gives, on page 133, the following information about the nature of the work of an electronics engineer:

Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment . . . Electrical and electronics engineers design new products, write performance requirements, and develop maintenance schedules. They also test equipment, solve operating problems, and estimate the time and cost of engineering projects.

Many of the duties described in the *Handbook* do not apply to the proffered position. According to the *Handbook*, electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. The duties that the beneficiary will perform are not those of an electronics engineer. The director found that the duties of the position are those of an electronic equipment repairer under the 1998-1999 edition of the *Handbook*. The AAO finds that the duties of the proffered position are primarily those of a precision instrument and equipment repairer, who repair and maintain medical equipment and other precision instruments. The *Handbook*, 2004-05 edition, indicates at pages 563 and 564 that medical equipment repairers and other precision instrument and equipment repairers maintain, adjust, calibrate, and repair electronic, electromechanical, and hydraulic equipment. Medical equipment repairers, often called biomedical equipment technicians, work on medical equipment such as defibrillators, heart monitors, medical imaging equipment (x-rays, CAT scanners, and ultrasound equipment) and electric wheelchairs.

The duties of the proposed position do not rise to the level of those of an electronics engineer. Many of the beneficiary's duties are performed by a precision instrument and equipment repairer, and this occupation does not require a bachelor's degree in a specific specialty as a minimum for entry into the occupation. Training requirements include a high school diploma and, in some cases, postsecondary education, coupled with significant on-the-job training. The information in the *Handbook* regarding a precision instrument and equipment repairer and the beneficiary's proposed duties demonstrate a baccalaureate or higher degree, or its equivalent, is not required for entry into the position. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The record does not include any evidence that a degree requirement is common to the industry in parallel positions among similar organizations. The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Thus, the petitioner has not established that the position is a specialty occupation under the first alternative prong of 8 C.F.R. §214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the proposed duties involve the design, development, testing and supervision over the manufacture of electrical and electronic equipment, as performed by electronic engineers. The petitioner has not distinguished the position as unique from or more complex than a precision instrument and equipment repairer, a position for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The petitioner does not assert that it normally requires an individual with a degree in a specific specialty for entry into the proffered position, and offers no evidence concerning the petitioner's past hiring history with regards to this position. Consequently, the petitioner has not established the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, to the extent that they are depicted in the record, the duties of the proffered position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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