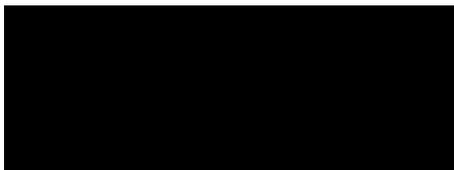




U.S. Citizenship  
and Immigration  
Services

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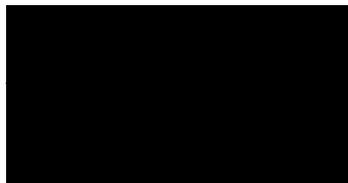
D2

FILE: EAC 03 085 51904 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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 director of the service center 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 provides installation, rental, and performance of sound and audio equipment. It seeks to employ the beneficiary as a sound engineer. The petitioner, therefore, 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 additional evidence.

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 sound engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail advising on purchasing decisions; programming signal processors; preparing equipment for shows; supervising the testing and fixing of equipment; managing and supervising the loading and offloading of trucks, installation of equipment, rigging of speakers and hardware, and building of supporting construction; patching and operating equipment; and advising clients about operations. The petitioner's February 5, 2002 letter also described the beneficiary's duties. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in sound engineering.

The director determined that the proffered position was not a specialty occupation. The director referred to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) to state that employers do not require sound engineers to possess a bachelor's degree in a specific field of study. The director found the submitted job postings did not show that similar companies in the industry require at least a bachelor's degree in a specific field for similar positions. According to the director, the petitioner's claim of using the services of freelance engineers who hold bachelor's degrees was not supported by corroborating evidence. The director stated that although colleges and universities offer baccalaureate programs in the field, this did not establish that the degrees are the industry standard for entry into the position. The director noted that there are associate programs in the field.

On appeal, counsel states that the occupation of sound engineer is a specialty occupation. Counsel states that the submitted job postings, the position occupied by [REDACTED] and the sound engineer job that is described in the *Handbook* differ from the proffered position. Counsel contends that the proffered position involves more than assembling equipment and warehouse duties. According to counsel, the petitioner described the duties of the proffered position in order to comply with the job description in the *Dictionary of Occupational Titles (DOT)*; the petitioner did not include in the job description all the decisions the sound engineer is charged with making. Counsel states that the petitioner sought to employ the beneficiary based on his artistic range and ability, and refers to the letters of recommendation to verify the beneficiary's qualifications. Counsel stresses that the proposed position requires artistic judgment, and that this is not described in the *Handbook*. Counsel states that recording studio equipment, which is referred to in the *Handbook*, does not apply to this position, and that technicians do not consult with performers or submit plans and designs for performances. Counsel submits a letter from the company president on appeal.

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). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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 *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the proffered position's duties were described to comply with the job description in the *DOT*, and did not include the many decisions the sound engineer is charged with making. Counsel's statement that the description of a sound engineer job in the *Handbook* differs from the proffered position and that the proffered position requires artistic judgment is not persuasive. The petitioner provides installation, rental, and performance of sound and audio equipment; it seeks to employ a sound engineer. A review of the *Handbook* reveals that the duties of the proffered position are an amalgam of those performed by sound engineers and chief engineers. The *Handbook* discloses that sound engineering technicians:

operate machines and equipment to record, synchronize, mix, or reproduce music, voices, or sound effects in recording studios, sporting arenas, theater productions, or movie and video productions.

Chief engineers, transmission engineers, and broadcast field supervisors are described in the *Handbook* as overseeing other technicians and maintaining broadcasting equipment.

The beneficiary's duties of programming signal processors; preparing equipment for shows; supervising the testing and fixing of equipment; managing and supervising the loading and offloading trucks, installation of equipment, rigging speakers and hardware, and building of supporting construction; and patching and operating equipment are encompassed within the description of a sound engineering technician and a chief engineer.

The *Handbook* relays:

The best way to prepare for a sound engineering technician job is to obtain technical school, community college, or college training in electronics, computer networking, or broadcast technology.

The *Handbook* also states that experienced technicians can become supervisory technicians or chief engineers, though a college degree in engineering is needed in order to become chief engineer at a large television station. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, sound engineer.

On appeal, counsel concedes that the duties in the job postings differ from the proffered position; thus, the postings cannot be used to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, sound engineer.

The AAO notes that the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by information contained in the *DOT*.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the evidentiary record contains evidence about educational programs and job postings. The director properly concluded that colleges and universities may offer baccalaureate programs in a specific field; however, this alone does not establish that such degrees are the industry standard for entry into the proffered position. As already discussed, counsel stated that the job postings "did not reflect the nature of the job offered, as indicated in the denial letter." Consequently, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Although counsel claims that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty, no evidence is in the record that would substantiate this claim. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The director properly concluded that the petitioner's claim of using the services of freelance engineers who hold bachelor's degrees was not supported by independent corroborating evidence. 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). Thus, the petitioner's statements carry little or no probative value.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the *Handbook* reveals that the beneficiary's duties are performed by sound technicians and chief engineers, occupations that do not require a bachelor's degree. Therefore, the petitioner fails to establish the regulation at 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.