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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 041 53879 Office: VERMONT SERVICE CENTER

Date: FEB 22 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 a digital graphics company and seeks to employ the beneficiary as an electronics/digital 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating 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 electronics/digital engineer. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to the record the beneficiary would: provide hardware/software maintenance; train technical service support personnel on all large format digital printers and Scotchprint electronic graphics systems in Puerto Rico and the Caribbean; direct all equipment testing; and solve operating problems. The petitioner does not state that it requires a minimum of a bachelor’s degree in any specific discipline for entry into the proffered position, but notes that knowledge required to perform the duties of the position is usually found in a professional who holds a minimum of a bachelor’s degree in engineering or a related field of study.

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, as asserted by counsel. 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. Min. 1999) (quoting *Hird/Baker 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 duties of the proffered position are not those of an electronics engineer as stated by the petitioner. Electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. They may also design new products, write performance requirements, develop maintenance schedules, test equipment, solve operating problems, and estimate the time and cost of engineering projects. The duties of the proffered position do not include these complex duties. The duties of the offered position, though vaguely described, are more closely related to engineering technicians as set forth in the *Handbook*. These individuals 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. In this instance, the beneficiary would not design, develop or supervise the manufacture of electrical or electronic equipment. Instead, he would provide product maintenance, train support personnel and solve basic operating problems, services that engineering technicians provide. The *Handbook* notes that although it may be possible for certain engineering technicians to obtain employment without formal training, most employers prefer to hire those with at least a 2 – year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, and public and private vocational-technical schools as well as in the Armed Forces. It is clear that a baccalaureate or higher degree or its equivalent in a specific specialty is not normally the minimum requirement for entry into the offered position. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not state that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. As such, the petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The petitioner asserts that the duties of the position are highly complex and technical in nature, and as such the position qualifies as a specialty occupation. In support of that assertion the petitioner submits letters from: [REDACTED] Sales Manager, Display and Graphics Business for 3M Puerto Rico, Inc., and [REDACTED] Territory Sales Manager, Vutek Digital Printing Systems. [REDACTED] recommends that an advanced operator for Scotchprint Printer SP2000 (sold and maintained by the petitioner) be an electronics engineer. [REDACTED] does not state the basis for his opinion, nor does he state that such operators normally have engineering degrees in the industry. As such, his opinion is of little evidentiary value in this regard. Likewise, [REDACTED] recommends that the petitioner employ an engineer to provide on site maintenance of Vutek printing systems. Again, [REDACTED] provides no basis for his opinion, and only recommends that the petitioner employ an engineer. He does not state that the beneficiary's duties are so complex or unique that they require the services of a degreed engineer. Neither opinion establishes that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of baccalaureate or higher degree in a specific specialty.

Finally, the petitioner states that the duties of the proffered position can only be performed by a degreed engineer because the equipment manufacturer requires a degreed engineer for its technical advisor position. The position described by 3M Manufacturera in Venezuela for a technical advisor is not parallel to the position offered to the beneficiary. The 3M Manufacturera position requires an engineering degree for a position that: initiates and completes technical activities leading to new or improved products or processes; establishes and cultivates a network of support (laboratory, manufacturing, engineering sales and marketing) to facilitate completion of assignments; participates in project planning; and documents experimental data/observations in technical notebooks (or approved electronic files), prepares reports, and makes oral presentations. The duties of that position are not similar to the duties of the proffered position and are more complex than the duties to be performed by the beneficiary. The duties to be performed by the beneficiary, as described by the petitioner, appear to be those normally performed by engineering technicians who do not

typically have a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.