

Identifying data deleted to
prevent disclosure of information
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

NO COPY

DA

JUN 01 2005

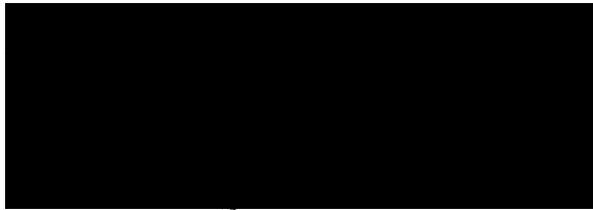


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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 California 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 is a business specializing in sales and services of general office machines, with four employees. It seeks to hire the beneficiary as a field engineer. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary's services as a field engineer. Evidence of the beneficiary's duties includes: the Form I-129, a June 26, 2002 letter of support from the petitioner and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising field technicians of the day-to-day service calls, assigning proper technician to handle products, writing letters and reports and communicating with suppliers for technical assistance, parts and technical news bulleting [sic]; conducting training of new engineers and new products; developing effective training and re-training modules and materials; visit customer's site to properly monitor the quality of work and customer satisfaction; evaluating the technical abilities of engineer, reviewing service reports to meet the optimum quality of work; assisting in major problems encountered by other engineers; utilizing engineering knowledge and technology to identify, solve or alleviate problems; liaise with the management, explaining each stage of the manifold and varied duties; making modifications where necessary until the process is up to the standard requirements and the client's needs. In the initial petition, the petitioner stated the position requires special education and skills. In response to the director's request for evidence, counsel stated that the petitioner requires a field engineer to have a bachelor's degree and two years experience in the field.

The director issued a first request for evidence stating the beneficiary does not have a degree as required by the specialty. The director requested evidence that the petitioner has education, specialized training and or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation. In response, the petitioner submitted a letter from the beneficiary's previous employer.

The director issued a second request for evidence requesting a more detailed job description and whether or not the beneficiary will supervise employees. Additionally, the director requested more information about the petitioner's business. In response, counsel submitted the same job description and noted that the beneficiary would not be supervising any employees. Counsel also provided internet job postings, the petitioner's business license, the petitioner's last two year's federal income taxes, the petitioner's Form DE-6 for the quarter ending September 30, 2003. The petitioner noted that it had filed another H-1B petition that was

pending for a different beneficiary. The petitioner provided a copy of its organizational chart. The petitioner provided a copy of the beneficiary's training certificate.

The director denied the petition and noted that the petitioner contradicted itself when it indicated that the beneficiary would not supervise any employees when in its initial submission, the petitioner indicated that the beneficiary would "evaluate the technical abilities of each engineer." The director noted that the organizational chart showed a repairs and maintenance department and had not specified or given reference to an engineering position. The director stated that the petitioner's creation of a position with an automatic bachelor's degree requirement would not conceal the fact that the position is not specialty occupation. The director noted that the two internet ads submitted were for product manufacturers. The director found that the description of the proffered position barely resembles that of the field engineer found under the heading of Electrical and Electronic Engineers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director indicated that the petitioner has not established that it is the standard for an office equipment retailer company to require a bachelor's degree for the field engineer position. The director determined that the lack of complexity in engineering requirements within the petitioner's organization indicates that the position does not exist in the petitioner's industry.

On appeal, counsel asserts that the proffered position of a field engineer "is very different to that of an electronic engineer. The field engineer is working with specific machines, in this case, complex digital and manual copying machines as well as other machines common in the industry." Counsel contends that the beneficiary has the equivalent of a bachelor's or higher degree based on the educational evaluation. Counsel asserts that the proffered position qualifies as a specialty occupation because the degree requirement is common to the industry and resubmits internet postings. Counsel also states that the petitioner normally requires a degree for the position and that the nature of the duties are specialized and complex.

Based on the record of proceeding, the AAO has determined that the proffered position is most similar to that of computer, automated teller and office machine repairer. According to the *Handbook*, office machine servicers work on photocopiers, cash registers, mail-processing equipment, and fax machines. The *Handbook* notes that newer models of office equipment increasingly include computerized components that allows them to function more effectively than earlier models. According to the *Handbook*, when equipment breaks down, many repairers travel to customers' workplaces or other locations to make necessary repairs. These workers, known as field technicians, often have assigned areas in which they perform preventative maintenance on a regular basis. Bench technicians work in repair shops located in stores, factories or service centers. In small companies, repairers may work both in repair shops and at customer locations.

The *Handbook* explains that workers use a variety of tools for diagnostic tests and repair. To diagnose malfunctions, they use multimeters to measure voltage, current, resistance, and other electrical properties; signal generators to provide test signals; and oscilloscopes to monitor equipment signals. To diagnose computerized equipment, repairers use software programs.

With respect to the educational qualifications required of computer, automated teller and office machine repairers, the *Handbook* states:

Knowledge of electronics is necessary for employment Employers generally prefer workers who are certified as repairers or who have training in electronics from associate degree programs, the military, vocational schools, or equipment manufacturers. . . . Most

office machine and ATM repairer positions require an associate degree in electronics. . . . Field technicians work closely with customers and must have good communications skills and a neat appearance. . . . Experienced workers may become specialists who help other repairers diagnose difficult problems or who work with engineers in designing equipment and developing maintenance procedures. . . . Experienced workers may also move into management positions responsible for supervising other repairers.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the field engineer position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings from two companies. However, the advertised companies are very dissimilar to the petitioner. [REDACTED] Inc. is a database software company looking for a senior field sales engineer. The second posting for [REDACTED] Medical Systems, Inc. makes medical devices and is advertising a senior field support engineer. Additionally, the required duties of the advertised position are different from the proffered position. For example [REDACTED] Inc. is requiring experience with UNIX (Linux), NT and Windows XP platforms as well as experience implementing, managing and winning new product trials. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

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 specific degree or its equivalent for the position. On appeal counsel contends that the employer normally requires a degree or its equivalent. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for computer, automated teller and office machine repairers, occupations that do not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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.