



U.S. Citizenship
and Immigration
Services



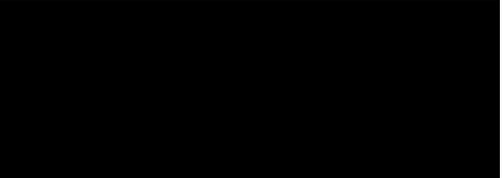
DA

FILE: SRC 04 115 51210 Office: TEXAS SERVICE CENTER Date: NOV 22 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:



Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

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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 a pipeline integrity management business that seeks to employ the beneficiary as a "Lead GUL (Long-Range Ultra Sonics) Technician." The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional supporting documentation, including the following: an article from the National Association of Corrosion Engineers (NACE) entitled *Experience with Torsional Guided Wave Ultrasonic Technique for the Inspection of Offshore Pipeline Installations*; training and qualification information from the U.K. business Guided Ultrasonics Ltd.; a new professional opinion/evaluation document; documentation relating to the educational backgrounds of the petitioner's other employees; and a letter from a faculty member of Imperial College London.

The AAO will first address the director's conclusion that the position is not 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.

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 "Lead GUL (Long-Range Ultra Sonics) Technician." Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 27, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the job description, the beneficiary would perform the following duties:

Lead GUL (Guided Ultrasonic Long-Range) Technician inspects and tests industrial equipment and facilities in the oil and gas industries using highly technical and sophisticated machinery and methods in ultrasonics and high-end shear wave testing. The inspection and non-destructive testing methods that will be used is leading-edge technology providing safety-critical information on the structural integrity of gas carrying and similar pipelines that cannot be tested by conventional means such as pigging. To qualify as a GUL Technician, one must be undergo [sic] extensive training and certification including proficiency in relevant codes. Some of other [sic] required knowledge includes Liquid Penetrant Inspection, Magnetic Particle Inspection, Industrial Radiology, Ultrasonic Inspection, Wave Maker Pipe Screening System, Tank Floor Testing and Pulse Eddy Current. Also provides testing demonstrations for high-level clientele.

The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in engineering or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the job reflects specialization in a technical field, not a theoretical or academic field. 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 instant petition is only a request for a change of employer, that the beneficiary has been employed in H-1B status as a "Lead GUL Technician" since his arrival to the United States on September 7, 2002. Counsel states further that a "Lead GUL Technician" is a highly skilled and sophisticated position requiring specialized knowledge and training. Counsel additionally states that the director erred in concluding that the proposed duties entail the use of "Teletest System" equipment and that professional welding societies offer comparable training. Counsel states: "This new and much more complex technology overwhelmingly outperforms and virtually replaces the Teletest System in current days. While the Teletest System is based on similar theoretical basis, it did not call for much case-specific calculations and implementation of sophisticated engineering theory or principles as the GUL Technology does." Counsel submits the above-mentioned documents as supporting evidence.

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 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 U.S. 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 does not concur with counsel that the proffered position is a specialty occupation. While the AAO normally consults the *Handbook* for information about the duties and educational requirements of particular occupations, that publication does not contain information about all jobs in the labor market, such as the position offered herein. The record, however, does contain an article from the National Association of Corrosion Engineers (NACE) entitled *Experience with Torsional Guided Wave Ultrasonic Technique for the Inspection of Offshore Pipeline Installations*, which describes the required training as follows:

The guided wave inspection is a relatively new technique in the ultrasonic test sphere. Training and certification of the operators are carried out by the manufacturer of the equipment – the operators are classified as Level I, II and III. Certification is given after a week long theoretical and practical training session followed by written and hands on practical examinations. It is therefore incumbent on the end user company to pick the right contractor(s) with technicians possessing the required qualification.

The record also contains an article from the U.K. business Guided Ultrasonics Ltd., entitled *Training and Qualification Scheme for the Wavemaker pipe screening system*, which describes the recommended education, training, and experience of the GUL qualification "Level II," which is the qualification level of the beneficiary, as follows:

Level I qualification [**Either** an experienced level 2 UT technician (e.g. ASNT, PCN) **Or** Minimum Technical degree or HNC] and at least 100 points made up from the following: 1 point for each day testing at level I; 2 points for each day worked with a level 2; and attend a refresher course 25 points. (Emphasis in original.)

Summary of training: 4/5 day course comprising the following: Level 2 Guided Wave theory; Advanced interpretation; Use of low frequency equipment; Advanced calibration systems; Advanced troubleshooting; Use of longitudinal mode; and Detailed review of level I work. Must pass a written test, practical test and review of Level I work.

Neither of the above articles indicates that a baccalaureate or higher degree in engineering, or its equivalent, is required for a "Lead GUL (Long-Range Ultra Sonics) Technician," Level II. Rather, according to the above articles, a technical degree, the successful completion of a four to five day training course comprising Level 2 Guided Wave theory, and some short-term related employment experience comprises the recommended education, training, and experience.

On appeal, counsel submits an evaluation from the director of the Industrial Management Program at State University of New York Stony Brook, who states, in part, that a Lead GUL Technician requires the minimum of a bachelor's degree in engineering or a related field. Counsel also submits a letter from a representative of the U.K. business Guided Ultrasonics Ltd., who states, in part, that the skills required for the proffered

position “are normally associated with high calibre Engineering Graduates.” This information is not convincing evidence that the position of a “Lead GUL (Long-Range Ultra Sonics) Technician” is a specialty occupation in this case, based on required qualifications and training discussed above. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is required for the proffered position.

Counsel noted that CIS approved other petitions that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether she reviewed the prior approvals of the other nonimmigrant petitions. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

It is also noted that the record of proceeding does not contain copies of the visa petitions that the petitioner claims were previously approved. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the petitioner employs two other engineers in the “department of GUL Technology.” The record, however, contains evidence of an engineering degree for only one of these employees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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.¹ In this regard, the petitioner fails to establish that the “Lead GUL (Long-Range Ultra Sonics) Technician” it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

The director also found that the beneficiary was not qualified for a specialty occupation because he does not hold a baccalaureate degree. On appeal, counsel states, in part, that the record contains two evaluations that demonstrate that the beneficiary’s coursework and employment experience are the equivalent of a bachelor’s degree in engineering. As discussed above, a “Lead GUL (Long-Range Ultra Sonics) Technician,” Level II, requires a technical degree, the successful completion of a four to five day training course comprising Level 2 Guided Wave theory, and some short-term related employment experience. In this case, the beneficiary holds a National Certificate in Engineering from a foreign institution, which has been found to be the equivalent of the completion of academic studies leading to a U.S. university degree. It is noted that neither evaluator determines the equivalent credit hours of the beneficiary’s foreign studies. Furthermore, one of the evaluators, who is from a company that specializes in evaluating academic credentials, concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in engineering from an accredited U.S. institution of higher education. The evaluation, however, is based upon the beneficiary’s education, training and work experience. A credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The record also contains no evidence of the beneficiary’s successful completion of a four to five day training course comprising Level 2 Guided Wave theory. Although Dr. Alleyne states in his June 16, 2004 letter that the beneficiary “attended the GUL level 2 course in London in September 2003 and passed with distinction,” the record contains no evidence of this training, such as a training certificate indicating the length of training or the subjects that the course covered. As such, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position. Even if the AAO were to conclude that beneficiary was qualified to perform the duties of the proffered position, however, the petition still would not be approved because the proffered position is not a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and “might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition.” *See id.* at 387.

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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.