



U.S. Citizenship
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Services

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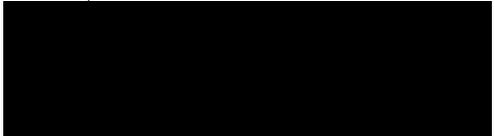


FILE: WAC 04 003 50802 Office: CALIFORNIA SERVICE CENTER Date: ~~JAN 30~~ 2006

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 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 involved in the business of design, distribution, and installation of mobile electronic products and seeks to employ the beneficiary as a quality control manager. It endeavors to classify him 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 asserting 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 electrical engineer. Evidence of the beneficiary's duties was included with the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Coordinate the on-site electronics production process to assure efficiency of production;
- Coordinate the on-site electronics product installation process to assure efficiency of operation;
- Analyze electronic schemes, diagrams, blueprints, and compute the project competition procedures determining the methodology and assuring efficient production;
- Analyze personnel and capital resources to select the best way to meet efficiency goals;
- Determine when overtime or extra shifts are necessary;
- Generally monitor quality control of all products and installations;
- Monitor inventory control;
- Report to the president; and
- Coordinate activities with other departments.

The petitioner requires a minimum of a bachelor's degree in electronics, or equivalent experience, for entry into the offered position.

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. 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. 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 information about the duties and educational requirements of particular occupations. The petitioner contends that the proffered position is essentially that of an industrial production manager. The duties of the position, however, do not support that contention. Industrial production managers coordinate the resources and activities required to produce goods. They are responsible for production scheduling, staffing, procurement and maintenance of equipment, quality control, inventory control, and the coordination of production activities with those of other departments in assembly and manufacturing processes. The petitioner is in the business of wholesale and retail sales of electronics, with the retail division of its business also providing the design and installation of mobile electronics products (i.e., designing and installing a sound system for a vehicle). The record does not establish that the petitioner manufactures or produces any product. The duties of the offered position are not consistent with those performed by industrial production managers.

The duties of the proffered position are more closely related to those noted in the *Handbook* for electronic equipment installers and repairers with managerial responsibilities. These installers and repairers install, diagnose, and repair communication, sound, security, and navigation equipment in motor vehicles. Most installation work involves new alarm or sound systems. New sound systems vary significantly in cost and complexity of installation. While replacing a radio with a new CD player is a simple process, installing a new sound system with a subwoofer, amplifier, and fuses is far more complex. In the more complex installation, an installer may be required to build a fiberglass or wood box to hold the subwoofer and install it inside the unique dimensions of an automobile. The duties performed by these installers and repairers, however, whether simple or complex, do not normally require the attainment of a baccalaureate level education. The *Handbook* notes that while knowledge of electrical equipment and electronics is necessary for employment, many applicants gain this knowledge through programs lasting one – two years at vocational schools or community colleges, although some less skilled repairers may have only a high school diploma. More experienced repairers with advanced training may become specialists or troubleshooters who help other repairers diagnose difficult problems. Workers with leadership ability may become supervisors and work as managers, as in this instance. It is, therefore, apparent that a baccalaureate or higher degree is not normally the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner states that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, and in support of that assertion submits an opinion statement from Dr. [REDACTED] an assistant professor in the Department of Industrial and Systems Engineering at the Rochester Institute of Technology in Rochester, New York. Dr. [REDACTED] opines that due to the complexity and nature of the work to be performed by the beneficiary, it is an industry standard to require such employees to possess a bachelor's degree in quality assurance, industrial engineering, electrical engineering,

or electronic engineering. Dr. [REDACTED] does not, however, provide any basis for his opinion such as an industry or labor survey or study, or reference to any other supporting material. He states that his opinion is based simply on his educational background, professional experience and judgment. His unsupported conclusions shall be given little weight in these proceedings as they are in conflict with educational requirements for the position noted in the *Handbook*. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Counsel also asserts that a November 11, 1995 memorandum (as reported in the March 25, 1996 issue of *Interpreter Releases*) from the INS (now CIS) Office of Examinations provides that credentials evaluations submitted with H-1B petitions by reputable credentials evaluation services should be accepted without question unless containing obvious errors, and accordingly, the opinion of Dr. [REDACTED] should be accepted without question. That memorandum refers to the acceptance of a credentials evaluation performed by a credentials evaluation service, not to the acceptance of an advisory opinion relating to the industry educational standard required for any particular occupation. Counsel's statement in this regard is unpersuasive. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel further contends that an April 23, 2004 memorandum from INS (now CIS) headquarters Office of Examinations requires approval of an extension petition if the petition involves the same parties and underlying facts. The present petition is an extension petition (continuation of previously approved employment). The memorandum does not provide authority for counsel's assertion, however, in that the memorandum was provided solely for guiding CIS personnel in the performance of their professional duties. The memorandum was not intended to be, and may not be relied upon, to create any right or benefit, substantive or procedural, enforceable at law by any individual or party. Further, the memorandum provides that a prior approval need not be given deference where a material error was made with regard to the previous petition approval, such as the misapplication of statutory or regulatory requirements to the facts at hand. The prior approval of this petition involved the misapplication of statutory or regulatory requirements in that the present petition does not qualify by law, as previously and hereinafter set forth, as a specialty occupation.

This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as a quality control manager. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum

for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has not established that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor has it established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties of the offered position are routine in the industry for managers and supervisors of electronic equipment installers and repairers, and are normally performed by individuals with less than a baccalaureate level education. The petitioner has failed to satisfy the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (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 and the appeal shall accordingly be dismissed.

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