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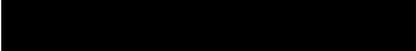
**U.S. Citizenship
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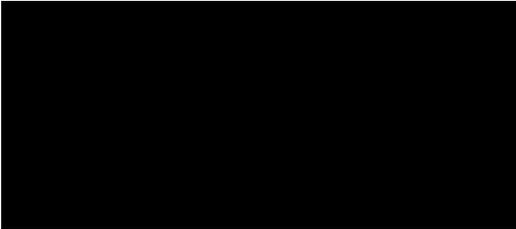
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FILE: SRC 05 003 51685 Office: TEXAS SERVICE CENTER Date: **JUN 06 2006**

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.

Robert P. Wiemann, Chief
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 is a retailer of semi-conductor and other related electrical and electronic products and services. It seeks to employ the beneficiary as a sales 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 finding that the proffered position is not a specialty occupation, and that the beneficiary is not qualified to perform a specialty occupation. Counsel submits a timely appeal.

The AAO will first address the director's conclusion that the proposed 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 sales engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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: selling semiconductor and related electrical and electronic products and providing technical services to clients who require knowledge of engineering and cost effectiveness; calling on management representatives such as engineers and technical personnel at commercial and industrial establishments in order to convince prospective clients of the desirability of products or services offered; reviewing plans and customer documents to develop and prepare cost estimates or projected increases in production based on a clients' use of proposed products or services; drawing up or proposing changes in equipment, processes, or services which would result in a cost reduction or improvement in operations; providing technical services to clients relating to use, operation, and maintenance of semiconductor and related electrical and electronic products; and providing technical training to employees of clients. For the proposed position, the petitioner asserts that it requires a bachelor's degree or equivalent experience. The petitioner seeks to employ the beneficiary who holds the educational equivalent of a baccalaureate degree in engineering.

The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that a sales engineer usually requires a bachelor's degree. However, the director concluded that the proposed position would not require a bachelor's degree as it more closely resembles a salesman-technician. The director disagreed with the educational evaluator's conclusion that the beneficiary holds the equivalent of a bachelor's degree in engineering.

On appeal, counsel states that the director did not support his finding that the offered position is not a specialty occupation. Counsel references *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. Cal. 1989) to establish that the size of the employer is irrelevant in determining whether an employer needs the services of a professional. Counsel asserts that the petitioner sells semiconductor and related electrical and electronic products, and that a sales engineer is directly related to its business operations. Counsel discusses technicians and sales engineers as those occupations are depicted in the *Handbook* and the *Dictionary of Occupational Title's (DOT)*. Counsel states that the offered position is similar to the beneficiary's prior position with DNS Korea Co., Ltd. The Texas Workforce Commission (TWC), counsel asserts, determined that the offered position is that of a sales engineer. Counsel asserts that the educational evaluation reflects that the beneficiary holds the equivalent of a bachelor's degree in engineering.

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 2006-2007 edition of 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

The evidence of record (the company profile, product list, and semiconductor process description; tax records; product brochure; and financial statement) does not support counsel's assertion that the proposed position is analogous to a sales engineer as that occupation is portrayed in the *Handbook*. The *Handbook* describes a sales engineer as follows:

Many products and services, especially those purchased by large companies and institutions, are highly complex. Sales engineers—who also may be called *manufacturers' agents*, *sales representatives*, or *technical sales support workers*—work with the production, engineering, or research and development departments of their companies, or with independent sales firms, to determine how products and services could be designed or modified to suit customers' needs. They also may advise customers on how best to use the products or services provided.

Selling, of course, is an important part of the job. Sales engineers use their technical skills to demonstrate to potential customers how and why the products or services they are selling would suit the customer better than competitors' products. Often, there may not be a directly competitive product. In these cases, the job of the sales engineer is to demonstrate to the customer the usefulness of the product or service—for example, how much money new production machinery would save.

Most sales engineers have a bachelor's degree in engineering, and many have previous work experience in an engineering specialty. Engineers apply the theories and principles of science and mathematics to technical problems. Their work is the link between scientific discoveries and commercial applications. Many sales engineers specialize in an area related to an engineering specialty. For example, sales engineers selling chemical products may have

chemical engineering backgrounds, while those selling business software or information systems may have degrees in computer engineering. Information on engineers, including 17 engineering specialties, appears elsewhere in the *Handbook*.

Many of the duties of sales engineers are similar to those of other salespersons. They must interest the client in purchasing their products, many of which are durable manufactured products such as turbines. Sales engineers often are teamed with other salespersons who concentrate on the marketing and sales, enabling the sales engineer to concentrate on the technical aspects of the job. By working on a sales team, each member is able to focus on his or her strengths and knowledge. . . .

Sales engineers tend to employ selling techniques that are different from those used by most other sales workers. They generally use a "consultative" style; that is, they focus on the client's problem and show how it could be solved or mitigated with their product or service. This selling style differs from the "benefits and features" method, whereby the salesperson describes the product and leaves the customer to decide how it would be useful.

In addition to maintaining current clients and attracting new ones, sales engineers help clients solve any problems that arise when the product is installed. Afterward, they may continue to serve as a liaison between the client and their company. Increasingly, sales engineers are asked to undertake tasks related to sales, such as market research, because of their familiarity with clients' purchasing needs. Drawing on this same familiarity, sales engineers may help identify and develop new products.

Sales engineers may work directly for manufacturers or service providers, or they may work in small independent sales firms. In an independent firm, they may sell complementary products from several different suppliers and be paid entirely on commission.

The petitioner sells semiconductor and related electrical and electronic products to customers in the United States and Korea. The record contains the document entitled "Howlink Global Inc." This document conveys that the petitioner sells voice over the Internet telephony, which is used for system design and customer optimization, and IP Phone: CL-100 and Internet Telephony Gateway: CL-200, CL-400, CL-800, and semiconductor service (tools service provider and parts supply). The evidence in the record, however, is insufficient to show that the position will require a baccalaureate degree in electrical or electronics engineering in order to perform the duties. For example, the petitioner does not specifically describe what the review of plans and customer documents in order to develop and prepare cost estimates or project increases in production based on a clients' use of proposed products or services entails. Nor does the petitioner elaborate on what the drawing up or proposing changes in equipment, processes, or services which would result in a cost reduction or improvement in operations involves. Without such information, the AAO cannot conclude that the offered position would require a baccalaureate degree in a specific specialty such as electrical or electronics engineering. Thus, the AAO finds that the offered position is not a specialty occupation under the

criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations. The letters from the president of KDNS American, Inc. and the president of SCT, L.L.C. state that their company and all of the companies that they deal with require a minimum of a bachelor's degree in engineering or the equivalent for sales engineering positions. However, the AAO finds that there is no evidence in the record substantiating that other companies have the same educational requirement as KDNS American, Inc. and SCT, L.L.C. Moreover, the petitioner has not demonstrated that the position that is offered here is that of a sales engineer. 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)). Thus, the petitioner fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. The evidence fails to show that the offered position would require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner must demonstrate that it normally requires a degree or its equivalent for the position. No evidence in the record demonstrates the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. Based on the discussion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the evidence fails to establish that the offered position would require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish the last criterion 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 on this ground.

The AAO will now address the director's determination that the beneficiary is not qualified to perform services in a specialty occupation.

The submitted educational evaluation from [REDACTED] Director of the [REDACTED] [REDACTED] at the State University of New York, Stony Brook, states that the beneficiary has the equivalent of a bachelor's degree in engineering based on the combination of his education, which is the equivalent of two

years of academic coursework from an accredited institution of higher education in the United States, and his seven years of employment and training. The record contains no corroborating letter from the State University of New York, Stony Brook, indicating that the university has a program for granting credit based on an individual's training and/or work experience. The AAO disagrees [REDACTED] evaluation in that the beneficiary's duties during the seven years of employment do not reflect baccalaureate-level work experience. The beneficiary is described as assembling, installing, modifying, and providing technical services on semiconductor and related products for customers. Those duties are analogous to the *Handbook's* depiction of electrical and electronics installers, which are positions that do not qualify as specialty occupations. The *Handbook* states:

Electrical and electronics installers often fit older manufacturing equipment with new automated control devices. Older manufacturing machines are frequently in good working order but are limited by inefficient control systems for which replacement parts are no longer available. Installers replace old electronic control units with new PLCs. Setting up and installing a new PLC involves connecting it to different sensors and electrically powered devices (electric motors, switches, and pumps) and writing a computer program to operate the PLC. Electronics installers coordinate their efforts with those of other workers who are installing and maintaining equipment. . . .

Thus, the beneficiary's duties during his seven years of employment in Korea would not have required baccalaureate-level knowledge. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this reason, the beneficiary is not qualified to perform services in a specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform services in a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.