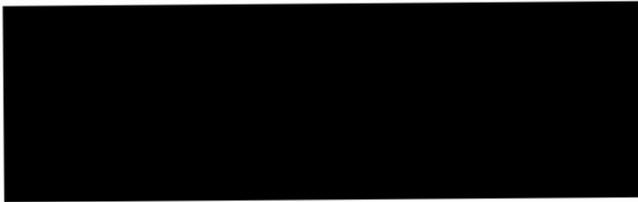




U.S. Citizenship
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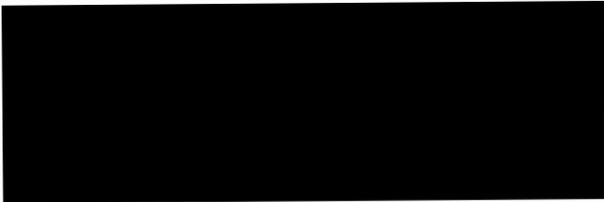
FILE: WAC 04 143 51031 Office: CALIFORNIA SERVICE CENTER Date: **JUN 29 2006**

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 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 non-profit organization that broadcasts religious programs and music. It seeks to employ the beneficiary as a broadcast engineering 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. On appeal, counsel submits a brief and additional evidence, including letters from other Christian broadcasting companies.

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 broadcast engineering technician. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's April 15, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would be responsible for the following duties:

- Design and supervise "set up" of sound/recording room and its equipment;
- Review program schedule with program director and plan and determine type [of] equipment, computer program and staffing based on the type of program;
- Supervise "set up" [of] broadcast and audio equipment (outboard gear, compressor, equalizer, etc.) required for the particular program and also preprogram computer system in order that a digital recording is made directly into computer for later editing through computer software;
- Review recorded program that has already been encoded into computer system and execute sound editing techniques using non-linear editing tools (Protools and other editing software such as Sound Forge);
- Further edit source material as necessary (i.e. addition of sound effects) using computer and other editing tools;
- Educate technical support staff on the use and maintenance of broadcast, audio and other equipment and computer software; and
- Carry out other project related technical decisions.

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

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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: "The entire issue was confused by the incorrect job title initially being used." Counsel states further that the most accurate title of the proffered position is that of sound engineer, and submits letters from two other Christian broadcasting companies as evidence that the degree requirement is industry wide.

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 *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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Broadcast and Sound Engineering Technicians and Radio Operators category in the *Handbook*, 2006-2007 edition, confirms the accuracy of the director's assessment to the effect that the job duties parallel the responsibilities of a broadcast technician/sound engineering technician.

The *Handbook* states:

Broadcast technicians set up, operate, and maintain equipment that regulates the signal strength, clarity, and range of sounds and colors of radio or television broadcasts. These technicians also operate control panels to select the source of the material. Technicians may switch from one camera or studio to another, from film to live programming, or from network to local programming.

Sound engineering technicians operate machines and equipment to record, synchronize, mix, or reproduce music, voices, or sound effects in recording studios, sporting arenas, theater productions, or movie and video productions.

Broadcast and sound engineering technicians and radio operators perform a variety of duties in small stations. . . . The terms "operator," "engineer," and "technician" often are used interchangeably to describe these jobs.

Chief engineers, transmission engineers, and broadcast field supervisors oversee other technicians and maintain broadcasting equipment.

As shown above, the proffered position and its duties do not exceed those of broadcast and sound engineering technicians. Moreover, in the radio-broadcasting context, "engineer" and "technician" are often used interchangeably. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a broadcast technician/sound engineering technician job.

Regarding parallel positions in the petitioner's industry, the record contains letters from two businesses similar to the petitioner's. Both writers assert that sound engineering positions require a bachelor's degree in engineering. Neither writer, however, provides evidence in support of his assertions or relies on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a specific specialty. Moreover, both writers base their conclusion on the title, rather than duties of the proffered position. Further, their assertions are not supported by any evidence that would establish the authority of these individuals to speak to industry-wide hiring practices. The AAO may, in its discretion, use

as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or 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 proffered position is a new position. The petitioner, therefore, has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, even if the petitioner had established that the proffered position required an engineering degree, the petition would still not be approvable because the current Labor Condition Application (LCA) would be rendered ineffective, as a position requiring an engineering degree would have to be identified on the LCA as an engineering position. For this additional reason, the petition may not be approved.

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.