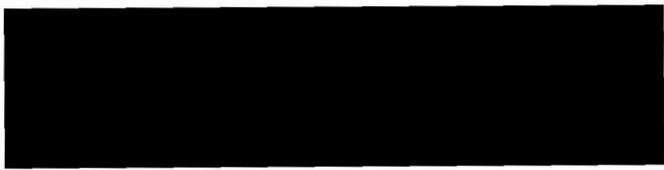




U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 140 51746 Office: CALIFORNIA SERVICE CENTER Date: **MAY 26 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:

SELF-REPRESENTED

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 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 provides electrical/mechanical consulting engineering services. It seeks to employ the beneficiary as a drafter (electrical). 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 because the proffered position is not a specialty occupation. The petitioner submitted a timely appeal.

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) the 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 drafter (electrical). 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, under the supervision of the senior engineer, assisting in the design of electrical systems for commercial and industrial buildings and laboratories using AutoCAD2002; assisting in preparing detailed drawings of architectural designs and plans for buildings according to specifications; drawing rough and detailed sketches, and drawings and plans to scale; using company-specific standards to create lighting, power, and teledata systems for installation; working closely with mechanical and plumbing engineers and designers; participating in updating existing drawings and symbol libraries; assisting in producing record drawings at the end of projects; using different file formats and integrating them into CAD to produce most effective layouts; transmitting electronic files via e-mail, FTP, and computer disk to other team members; and scanning and printing various formats of hard copies. The petitioner asserts that it requires a bachelor's degree or the equivalent for the proposed position.

The director stated that the proposed position resembles a drafter as that occupation is described in the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that this occupation does not require a bachelor's degree in a specific specialty. The director found that the evidence did not indicate that the petitioner normally requires a baccalaureate degree for the proposed position. The evidence failed to show, the director stated, that the job offered could not be performed by an experienced person whose educational training fell short of a baccalaureate degree. According to the director, the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field.

On appeal, the petitioner asserts that the offered position involves design of electrical systems, requiring a baccalaureate degree. The petitioner refers to the 2004-2005 edition of the *Handbook* for information about a senior drafter to establish the offered position as a specialty occupation. The petitioner states that it normally requires at least a bachelor's degree or its equivalent for the offered position. The petitioner describes the proposed duties in detail. The petitioner asserts that CIS previously granted H-1B status for a petition that it had filed on behalf of the beneficiary.

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 petitioner's assertion that the proposed position requires a baccalaureate degree is not persuasive. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The director correctly found that the *Handbook* reveals the proposed duties are similar to those of an electrical or electronics drafter, or both occupations, and that these jobs do not require a baccalaureate degree in a specific specialty. The *Handbook* describes these drafters as follows:

Electrical drafters prepare wiring and layout diagrams used by workers who erect, install, and repair electrical equipment and wiring in communication centers, powerplants, electrical distribution systems, and buildings.

Electronics drafters draw wiring diagrams, circuit board assembly diagrams, schematics, and layout drawings used in the manufacture, installation, and repair of electronic devices and components.

The petitioner on appeal refers to the *Handbook* information about a senior drafter to establish the offered position as a specialty occupation. The *Handbook* conveys the following concerning the qualifications requirements of drafters:

Employers prefer applicants who have completed postsecondary school training in drafting, training that is offered by technical institutes, community colleges, and some 4-year colleges and universities. Employers are most interested in applicants with well-developed drafting and mechanical drawing skills; knowledge of drafting standards, mathematics, science, and engineering technology; and a solid background in CADD techniques. In addition, communication and problem-solving skills are important.

Training and coursework differ somewhat within the drafting specialties. The initial training for each specialty is similar. All incorporate math and communication skills, for example, but coursework relating to the specialty varies. In an electronics drafting program, for example, students learn how to depict electronic components and circuits in drawings.

Entry-level or junior drafters usually do routine work under close supervision. After gaining experience, they may become intermediate drafters and progress to more difficult work with

less supervision. At the intermediate level, they may need to exercise more judgment and perform calculations when preparing and modifying drawings. Drafters may eventually advance to senior drafter, designer, or supervisor. Many employers pay for continuing education, and, with appropriate college degrees, drafters may go on to become engineering technicians, engineers, or architects.

The AAO is not convinced that the aforementioned information about drafters establishes the offered position as a specialty occupation. The *Handbook* explains that employers prefer the completion of postsecondary school training in drafting, and technical institutes, community colleges, and some 4-year colleges and universities offer such training. The *Handbook* further explains that after gaining experience, entry-level or junior drafters may become intermediate drafters and that “[d]rafters may eventually advance to senior drafter, designer, or supervisor.” Thus, the *Handbook* shows that a senior drafter would not require a baccalaureate degree in a specific specialty, as an entry-level drafter, which is an occupation that does not require a baccalaureate degree, may progress to a senior drafter position after acquiring sufficient experience. Accordingly, the petitioner’s assertion that a senior drafter requires a baccalaureate degree is not convincing.

The AAO’s conclusion, from the evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, those duties of the proposed position which are described with specificity correspond to those of a drafter, which is an occupation that the *Handbook* reveals does not require a baccalaureate degree.

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, the proposed position requires knowledge of electrical systems for commercial and industrial buildings and laboratories and how to draft using AutoCAD2002. This knowledge does not require a baccalaureate degree in a related field as the *Handbook* indicates that an electrician, which does not qualify as a specialty occupation, has such knowledge. The *Handbook* states:

In the classroom, apprentices electrical theory and installing and maintaining electrical systems. There also take classes in blueprint reading, mathematics, electrical code requirements, and safety and first aid practices also may receive specialized training in soldering, communications, fire alarm systems, and cranes and elevators. On the job, apprentices work under the supervision of experienced electricians. At first, they drill holes, set anchors, and attach conduit. Later, they measure, fabricate, and install conduit, as well as install, connect, and test wiring, outlets, and switches. They also learn to set up and draw diagrams for entire electrical systems. To complete the apprenticeship and become electricians, apprentices must demonstrate mastery of the electrician's work.

Furthermore, the evidence of record does not distinguish the offered position from an electrical or electronics drafter as those occupations are described in the *Handbook*.

Based on the discussion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner noted that CIS approved a similar petition that it had previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same unsupported and contradictory 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).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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 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.

WAC 04 140 51746

Page 7

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