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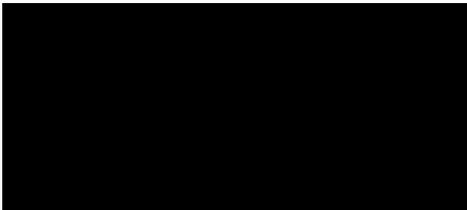
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FILE: WAC 04 148 50297 Office: CALIFORNIA SERVICE CENTER Date: **SEP 06 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision of the director shall be affirmed. The petition will be denied.

The petitioner is a skilled nursing facility that 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 proposed position of systems specialist fails to qualify as a specialty occupation, and that the beneficiary is not qualified to perform a specialty occupation. The AAO dismissed the petitioner's appeal on the ground that the evidence submitted on appeal failed to provide a basis of an appeal.

On motion for reconsideration, counsel states that the AAO failed to receive all of the evidence submitted on appeal, and counsel submits the additional evidence on motion.

The AAO grants counsel's motion.

In this proceeding, the AAO will first address the director's finding that the proffered 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) 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; (5) the Form I-290B and supporting documentation; (6) the AAO's decision; and (7) the petitioner's motion 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 systems specialist. 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 the job description of the systems specialist, the beneficiary would perform duties that entail:

- interpreting technical plans, manuals, operating procedures to ensure code compliance, proper procedures and maintenance of medical, electrical and mechanical equipment; conducting quarterly inspection and testing of existing electrical utility system, especially the fire alarm system.
- designing, developing, debugging, modifying, and testing electrical and computer circuits and systems using current tools and accepted practices, analysis techniques, and technologies according to the electrical code; preparing blueprints for electrical wiring or rewiring to meet fire protection and safety requirements; monitoring and overseeing the work of electricians and independent contractors who will do the work; preparing electrical sketches and shop drawings based on approved electrical plans regarding changes to the existing wiring installation due to additional load of new medical equipment; computing and determining the total load requirements and submitting technical specifications and recommendations to the administration; designing computing and determining and creating asset-protection related solutions through a combination of applications of data analysis and investigations including proper implementation; validating all test scenarios associated with programs to ensure accuracy.
- inspecting existing medical, electrical, and mechanical equipment and utility systems, and overseeing the work of independent contractors who maintain and repair the equipment; improving and automating the existing facility call light system; coordinating with the administrator and healthcare staff in developing and implementing an electrical and computerized system to integrate medical equipment operations and patient charting/recording with existing computer network, including connectivity, security, printing, performance monitoring, and data integration with third-party systems; providing technical support and analysis of energy efficiency opportunities for a diverse range of electrical usage and consumption; conducting load management programs and training for personnel to further enhance energy conservation and other cost-saving measures; coordinating with

the administrator and staff in developing the right programs for integration with the computerized network system of existing medical equipment and patient charting/recording; improving and automating the existing call light system to coordinate with the nursing station including the bed alarm monitors; engaging in daily analysis of order entry system and related systems such as inventory management programs to improve the flow of medical supplies; developing and maintaining tracking, reporting, trending, and documentation necessary to move forward; routinely checking systems and identifying problems; working with cross functional groups and departments to ensure loss prevention especially in the area of energy consumption and data protection; designing and creating records retrieval system compatible with the needs on patient care.

- Preparing a cost analysis and budget; tracking overall energy usage and identifying improvement opportunities to make the company more energy efficient; submitting monthly monitoring report regarding energy consumption of all medical equipment in use and inventory of medical supplies; conducting daily monitor of fast moving items inside the charge station including oxygen supply and its regulators and concentrators.

The petitioner requires a bachelor's degree in electrical or mechanical engineering for the proposed position.

The director stated that the proposed duties are a combination of those of systems administrators and general maintenance and repair workers as those occupations are described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that these occupations do not require a bachelor's degree. The director found the duties of the proposed position generic in nature, providing no detail as to whether they are unique, complex, or specialized. The director concluded that the petitioner satisfied none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found the beneficiary unqualified to perform a specialty occupation.

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 petitioner asserts that the proposed position requires a bachelor's degree in electrical or mechanical engineering and that an electrician lacks the qualifications to revise and develop the petitioner's existing systems in order to meet automation goals. The AAO finds that the beneficiary's duties correspond to those of an electrician as that occupation is illustrated in the *Handbook*:

Electricity is essential for light, power, air-conditioning, and refrigeration. Electricians install, connect, test, and maintain electrical systems for a variety of purposes, including climate control, security, and communications. They also may install and maintain the electronic controls for machines in business and industry.

Electricians generally specialize in construction or maintenance work, although a growing number do both. Electricians specializing in construction work primarily install wiring systems into new homes, businesses, and factories, but they also rewire or upgrade existing electrical systems as needed. Electricians specializing in maintenance work primarily maintain and upgrade existing electrical systems and repair electrical equipment.

Electricians work with blueprints when they install electrical systems. Blueprints indicate the locations of circuits, outlets, load centers, panel boards, and other equipment. Electricians must follow the National Electrical Code and comply with State and local building codes when they install these systems. . . .

. . .

Electricians connect all types of wire to circuit breakers, transformers, outlets, or other components. They join the wires in boxes with various specially designed connectors. During installation, electricians use hand tools such as conduit benders, screwdrivers, pliers, knives, hacksaws, and wire strippers, as well as power tools such as drills and saws. After they finish installing the wiring, they use testing equipment, such as ammeters, ohmmeters, voltmeters, and oscilloscopes, to check the circuits for proper connections, ensuring electrical compatibility, and safety of components.

. . .

Although primarily classified as work for line installers and repairers, electricians also may install low voltage wiring systems in addition to wiring a building's electrical system. Low voltage wiring involves voice, data, and video wiring systems, such as those for telephones, computers and related equipment, intercoms, and fire alarm and security systems. Electricians also may install coaxial or fiber optic cable for computers and other telecommunications equipment and electronic controls for industrial uses.

The beneficiary will ensure code compliance and proper procedures and maintenance of medical, electrical and mechanical equipment; design, develop, debug, modify, and test electrical and computer circuits and systems; prepare blueprints, sketches and shop drawings relating to electrical wiring or rewiring; compute and determine the total load requirements; inspect existing medical, electrical, and mechanical equipment and utility systems; oversee independent contractors who maintain and repair equipment; improve and automate the existing facility call light system; coordinate with the administrator and healthcare staff in developing and implementing an electrical and computerized system to integrate medical equipment operations and patient charting/recording with existing computer network; and ensure energy efficiency. These proposed duties are akin to those of an electrician who installs, connects, tests, and maintains electrical systems; rewires or upgrades existing electrical systems; works with blueprints when they install electrical systems; follows the National Electrical Code and complies with building codes when installing systems; and installs low voltage wiring systems in addition to wiring a building's electrical system.

The AAO acknowledges that some of the proposed duties that are described in the petitioner's response to the request for evidence differ from those of an electrician and were not previously depicted in the beneficiary's job description. The petitioner's response to the director's request for further evidence added the following items: engage in daily analysis of order entry system and related systems such as inventory management programs to improve the flow of medical supplies; develop and maintain tracking, reporting, trending, and documentation necessary to move forward; and design and create records retrieval system compatible with the needs on patient care.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The duties to engage in daily analysis of order entry system and related systems such as inventory management programs to improve the flow of medical supplies; to develop and maintain tracking, reporting, trending, and documentation necessary to move forward; and to design and create records retrieval system compatible with the needs on patient care that were provided by the petitioner in its response to the request for further evidence did not clarify or provide more specificity to the original duties of the position, but instead, added new duties to the job description. Therefore, the analysis of whether the offered position qualifies as a specialty occupation will not include these duties as they materially differ from those of the original job description.

Based on the evidence of record and the *Handbook's* information, 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, as the *Handbook* reports that an electrician does not require a bachelor's degree.

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, the AAO finds that the duties that are proposed here correspond to the *Handbook's* description of an electrician, which is an occupation that does not require a bachelor's degree. No evidence in the record reflects that the offered position has a complexity or uniqueness that requires baccalaureate-level knowledge in electrical or mechanical engineering. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. The *Handbook* reveals that the offered position resembles an electrician, which is an occupation that does not require a bachelor's degree. No evidence of record indicates that the nature of the proposed duties has a specialization and complexity requiring baccalaureate-level knowledge that is associated with a bachelor's degree in electrical or mechanical engineering. Accordingly, the petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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