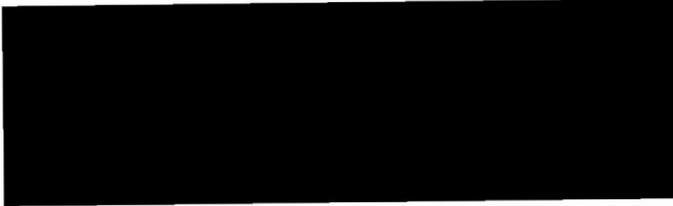




U.S. Citizenship
and Immigration
Services

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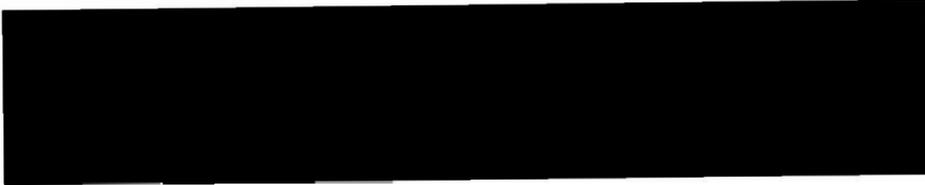
FILE: LIN 05 178 55493 Office: NEBRASKA SERVICE CENTER Date: **SEP 28 2006**

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a lighting systems manufacturer. It seeks to employ the beneficiary as an international sales and technical support representative, or sales engineer, and 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 on the grounds that the record failed to establish that the proffered position is a specialty occupation or that the petitioner is qualified to perform services in the claimed 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In the Form I-129 and an accompanying letter the petitioner described itself as a manufacturer of energy efficient lighting systems using solid state, semiconductor-chip technology. The petitioner stated that it was established in 2000, has eight employees, and earned gross revenues of \$1,248,000 in 2004. The petitioner indicated that it wished to hire the beneficiary as a sales engineer for three years, at an annual salary of \$40,000, and listed the customer-specific and general business duties of the position as follows:

- Establish and maintain relationships with U.S. and European customers by developing working relationships and maintaining them over time.
- Marketing, showing, promoting, and selling our light systems through product demonstrations, sales techniques and sales control systems we have developed and create sales or service contracts.
- Speak and write technical and non-technical English and other European languages clearly so the company can develop business inside and outside the United States, and produce technical drawings and instructions fluently in foreign languages.
- Produce electric schematic drawings based on specifications supplied by our customers for size, parts and equipment, color and quantity; determining production time, costs, resources, or materials needed.
- Use knowledge of design techniques, tools, and principles involved in production of precision technical plans, blueprints, drawings, and models.
- Draft installation drawings/instructions in English and for European customers in the native languages and modify product configurations, if necessary.
- Resolve technical questions and cover warranty related issues by reporting to management and clients on technical and systems-related topics, analyzing and meeting quality standards and evaluating customer satisfaction.
- Collect customers' purchase orders and forward them to our accounting department for further processing. Communicate with supervisors, co-workers, and subordinates by telephone, in written form, e-mail, or in person regarding new accounts, technical layout drawings, electrical specifications, etc.
- Correspond with EU customs authorities including knowledge of HTS (Harmonized Tariff Schedule) code.
- Once the product is complete or at least a prototype is developed, arrange for demonstrations or trial installations of equipment.
- Attend company training seminars to become familiar with product lines.
- Collaborate with sales teams to understand market requirements, to promote the sale of company products, and to provide sales support.
- Develop sales plans to introduce products in new markets.
- Identify resale opportunities and support them to achieve sales plans.
- Keep informed on industry news and trends, products, services, competitors, relevant information about legacy, existing, and emerging technologies, and the latest product-line developments.

According to the petitioner, the proffered position requires at least a bachelor's degree in international relations or a related field. The beneficiary is qualified for the position, the petitioner declares, by virtue of his bachelor of arts degree, majoring in international relations, from St. Cloud State University in St. Cloud, Minnesota, awarded on May 9, 2004, a prior associate of arts degree in May 2002 from Mesabi Range Community and Technical College, also in Minnesota, as well as his knowledge of multiple European languages where many of the petitioner's customers are located.

In subsequent submissions to the service center, including the response to the RFE and the appeal brief, the petitioner has provided a more detailed description of the proffered position's duties, which the petitioner characterizes as technical support services, and the percentage of time required by each duty. The list reads as follows:

- 10% Architect or end-customer sends the vector drawings of selected design/sign project including electrical requirements (maximum allowable input current, input voltage, maximum allowable power consumption, PFC (Power Factor Correction) and EMC (Electro Magnetic compatibility) requirements and environmental conditions (minimum and maximum ambient temperature) where system will be installed. If HYPERION Solar System is used, customer must describe future location of the sign including geographical position of the sign.

If electrical requirements are not included with original request for system layout and quotation, technical support personnel (TSP) follow up by phone or e-mail to collect and verify all requirements described in Step 1.

- 5% All received vector drawings are imported to AutoCAD and scaled to original size.

TSP measures maximum and minimum channel letter stroke width (distance between two adjacent walls).

TSP decides optimal amount of HYPERION R-Lite illumination strips to achieve requested surface light intensity.

- 30% In AutoCAD, TSP designs vector layout of HYPERION R-Lite System for each individual channel letter and/or logo. Amount of R-Lite illumination strips must follow installation requirements described in HYPERION R-Lite System installation manual.

- 10% In AutoCAD, TSP calculates required amount of HYPERION R-Lite power connectors and power jumpers.

In AutoCAD, TSP measures installed amount of HYPERION R-Lite illumination strips. Measured values for each individual color are entered to General Notes area of the layout drawing.

In AutoCAD, TSP groups HYPERION R-Lite illumination strips to create groups of maximum allowable footage. Each individual group must draw less than 4.5 amps at any given environmental condition. Amount of linear footage in each group must be within plus or minus 30% of the average linear footage for all groups combined.

- 15% Based on requirements and conditions from Step 1, TSP designs electrical connection diagram. Each terminal of the HYPERION power units must be loaded equally. Average electrical load on each individual terminal must be less than 4.5 amps including calculated losses in proposed secondary low voltage Class 2 wiring.

Based on Step 9, TSP calculates electrical current draw in amperes and inserts calculated values to electrical diagram. Maximum allowable footage of the selected power unit must be de-rated to reflect maximum ambient temperatures at the location where the sign will be located.

TSP calculates the power consumption of the installed system based on the calculated linear footage of the HYPERION R-Lite System, types of the installed power units. The power consumption of the system is calculated for normal operating conditions.

TSP calculates maximum power consumption of the installed system. **Maximum power** consumption is calculated by de-rating or pro-rating normal power consumption

TSP finalizes General Notes by entering operating electrical condition (input voltage, maximum input electrical current and maximum electrical power consumption).

Designated drawing is saved TSP generates unique drawing number and enters it to warranty database under specific customer name. This will be used as a tracking number for potential future warranty repairs.

10% Based on calculated values from previous steps and on collected information from the customer, TSP calculates power consumptions for the designed HYPERION R-Lite illumination system and substituted neon glass tube illumination system and generates "Energy Saving Report." This will be used by the customer to apply for energy savings rebates offered by local electric utility companies. If required, TSP fills in energy rebate form provided by utility company.

5% Drawing, Energy Saving Report, and other requested documents are sent by e-mail or fax to the customer for final approval. TSP follows up with a phone call to answer all technical questions the customer may have.

After final approval, TSP generates Sales Order and forwards it to Sales Department and Packaging. For all international orders, Sales Order must include Harmonized Tariff System code for U.S. Customs and customs service at final destination.

5% After HYPERION R-Lite System is installed, TSP collects real installed amounts of the illumination strips and measured electrical currents for each terminal. Collected values are entered to the electrical diagram and compared to calculated values. If abnormality exists, TSP calls customers and finds cause of the difference between measured and calculated values.

10% Technical and sales support to employees of [the petitioner's] assembly plant and sales office in Prague, Czech Republic TSP will be required to create bridge between corporate customers in North America and installation companies in Europe. There will be two sales engineers in our subsidiary in Prague directly accounting to [the beneficiary] with all technical and sales related questions. Conversation between our main office and the Prague office will be mostly in the Czech language.

In his decision the director determined that the duties of the proffered position more closely resemble those of a sales representative, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, rather than a sales engineer. The director referred to information in the *Handbook* indicating that while some employers may require a degree for certain sales representative positions, a baccalaureate or higher degree is not the normal minimum requirement for entry into the occupation. The director found that the record failed to establish that the petitioner had required a specialized degree for the position in the past, that businesses similar to the petitioner require a specialized degree for parallel positions, or that the duties of the position are so specialized and complex that baccalaureate level knowledge is required to perform them. The director concluded that the proffered position does not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also found that even if the proffered position were found to be a sales engineer and a specialty occupation, the petition could not be approved because the record does not establish that the beneficiary's baccalaureate degree in international relations or his courseload at St. Cloud State University would qualify him to perform services in the field of engineering.

On appeal counsel reiterates the petitioner's contention that the duties of the proffered position are those of a sales engineer. Two opinion letters are submitted in support of this contention. Counsel also contends that the beneficiary's associate degree from Mesabi Range Community and Technical College in May 2002, assertedly in computer science, included a math and technology courseload that qualifies him to perform the engineering tasks of the proffered position.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The occupation of sales engineer is described as follows in the *Handbook*, 2006-07 edition, at 419:

[S]ales engineers – who also may be called *manufacturers' agents, sales representatives, or technical sales support workers* – work with 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 customer's needs. They also may advise customers on how best to use the products or services provided.

[S]ales engineers use their technical skills to demonstrate to potential customers how and why the products or services they are selling would suit the customer

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

[S]ales 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

[I]n 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.

The AAO agrees with counsel that the duties of the proffered position – which the petitioner identifies interchangeably as an international sales and technical support representative or sales engineer – accord with the *Handbook's* description of a sales engineer and reflect as well the other titles for sales engineering positions identified in the *Handbook*, such as sales representative and technical sales support worker.

With respect to the educational requirements of the occupation, the *Handbook* states as follows:

A bachelor's degree in engineering usually is required to become a sales engineer. However, some workers with previous experience in sales combined with technical experience or training sometimes hold the title of sales engineer. Also workers who have a degree in a science, such as chemistry, or even a degree in business with little or no previous sales experience, may be termed sales engineers.

Id. at 420. Thus, sales engineers comprise a broad occupational category which extends beyond the field of engineering and does not always require an engineering or related degree. While a bachelor's degree in engineering may be the usual requirement for a sales engineer, the *Handbook* makes clear that other backgrounds may lead to such positions. Thus, sales engineer positions may sometimes filled by individuals with a combination of previous sales experience and technical training, or by individuals with science or business degrees and little or no prior sales experience. Based on the foregoing information, the AAO determines that the occupation of sales engineer does not meet the first alternative criterion to qualify as a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into such a position.

The petitioner indicates that the proffered position requires language competence in Czech and other European languages, which could involve some translating and/or interpreting duties. The *Handbook's* entry on interpreters and translators, however, clearly states that a baccalaureate or higher degree in a specific specialty is not required to enter that occupation. See *Handbook*, 2006-07 edition, at 265. Nor is a specialty degree required to conduct business in a foreign language. Foreign language fluency does not require an academic degree, but is just as likely, or more so, to be acquired by growing up and interacting with foreign cultures, as the beneficiary did in this case.

Counsel has submitted two opinion letters as evidence that the proffered position is a specialty occupation. One of the letters is authored by a principal of an organization called Alien Prevailing Wage Determination, Inc. (APWD), a consultant for potential H-1B workers, and the other letter is from a certified professional of human resources of the Society for Human Resource Management. Both of the authors state that they have

reviewed the duties of the proffered position, as described by the petitioner, and concur that the position is that of a sales engineer. The documentation of record, however, does not show that either author has a background in the petitioner's industry that would give them the requisite knowledge to evaluate the nature of the proffered position. Moreover, even if the authors were knowledgeable about the industry and its hiring practices, neither of them declares that a baccalaureate or higher degree in engineering or a related specialty, or the equivalent, is required to perform the services of the proffered position. Both authors indicate that an engineering degree is useful for sales engineers, but that alternative educational backgrounds and relevant work experience can also qualify individuals for such positions. This information accords with previously discussed information in the DOL *Handbook*. So even if the proffered position were that of a sales engineer, the opinion letters do not state that a baccalaureate or higher degree in a specific specialty, or the equivalent, is normally required for such positions.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letters submitted on appeal are not persuasive evidence that a baccalaureate or higher degree in a specific specialty, or its equivalent, is the normal minimum requirement for entry into the proffered position, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or that a specialty degree is a common requirement for sales representatives in the petitioner's industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proffered position qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) because the record does not establish that the proffered position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. Neither the petitioner's product line nor the foreign languages required to perform the job are unique, and the petitioner has not demonstrated that the lighting systems themselves, the nature of the sales activities, and the technical support to be provided are so complex that a degree in a specific job-related specialty is required.

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally requires a bachelor's degree in a specific specialty or its equivalent, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Moreover, the beneficiary's resume states that he began working in the proffered position in August 2004, shortly after the completion of his baccalaureate degree in international relations and without any prior sales experience or knowledge of the petitioner's product line. The beneficiary's curriculum at St. Cloud State University included a broad range of courses in international history, politics, and economics. While the economics/business courses may have been tangentially related to the beneficiary's sales duties in Europe, they have no direct relation to the petitioner's manufactured product – lighting systems – or the business activity of selling that product. Thus, the hiring of the petitioner demonstrates that the petitioner does not normally require a degree in a specific specialty that is directly related to the proffered position of sales engineer.

Finally, the record does not show that the duties of the proffered position are so specialized and complex that knowledge usually associated with a baccalaureate or higher degree in a specific specialty is required to

perform them, as required to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As previously discussed, the beneficiary's baccalaureate degree is in international relations, a broad subject area that is not directly related to the duties associated with the sale of lighting systems. The beneficiary's transcript from St. Cloud State University does not reveal any courses in engineering or related technical areas. Though the position apparently requires some knowledge of foreign languages, a baccalaureate degree in a specific specialty is not required to conduct business in a foreign language or, as indicated in the *Handbook*, to perform translating and/or interpreting duties. Based on the evidence of record – which indicates that the beneficiary was hired for the subject position immediately following his baccalaureate degree in international relations and without any sales experience or knowledge of the petitioner's product line – the AAO concludes that the knowledge required to perform the duties of the position can be acquired on the job by an individual without baccalaureate level knowledge in a specific specialty.

For the reasons discussed above, the proffered position does not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As previously discussed, the director determined that the beneficiary was not qualified to perform services in the field of engineering. Since the beneficiary's credentials are relevant on appeal only if the proffered position is a specialty occupation, which is not the case here, the AAO will not further address this issue.

The petitioner bears the burden of proof in these proceedings. See section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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