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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 05 129 52623 Office: TEXAS SERVICE CENTER Date: JAN 24 2007

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.

A handwritten signature in blue ink, appearing to read "Robert P. Wiemann".

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 sells and services ultrasound equipment. It seeks to employ the beneficiary as a mechanical engineer and 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 on the ground that the proposed position is not a specialty occupation and the beneficiary is not qualified to perform the duties of a specialty occupation. Counsel submitted a timely appeal and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date the AAO has not received any additional evidence into the record. Therefore, the record as constituted is complete.

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

The petitioner is seeking the beneficiary's services as a mechanical 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 its response to the RFE. The petitioner describes the beneficiary's duties as follows:

- Analyzing, designing[,] and redesigning mechanical systems and electronic components of ultrasound equipment to meet customer's requirements;
- Performing testing of reconditioned equipment to ensure that engineering and safety standards are met;  
Conducting and testing, repair and maintenance of all mechanical and electronic systems of all reconditioned ultrasound equipment to ensure that performance is at 100%;
- Evaluating product designs and design changes for compliance with engineering principles, customer requirements[,] and quality and safety standards; and
- Providing technical support to client[s] and engineering staff as necessary.

For the proposed position the petitioner requires a bachelor's degree in mechanical engineering.

The director denied the petition. He found that the beneficiary would not analyze, design, redesign mechanical systems and electronic components of ultrasound equipment, as stated by the petitioner. The director stated that the beneficiary's other duties are aligned with those of an electrical/electronic engineering technician, which the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) reports does not require a bachelor's degree in a specific academic specialty. The director noted that a mechanical engineer is a specialty occupation, but the proposed position is not similar to a mechanical engineer. The director concluded that the beneficiary is unqualified to perform the duties of a specialty occupation.

On appeal, counsel states that the director erred by finding that the proposed position is similar to an engineering technician. The proposed duties, counsel asserts, are those of a mechanical engineer. Counsel maintains that the petitioner designs and modifies medical imaging machines. He states that the beneficiary will analyze, design, and redesign mechanical systems and electronic components of ultrasound equipment. According to counsel, the beneficiary is qualified to perform the duties of the position.

Upon review of the record, the petitioner has established none of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The proffered position is therefore not a specialty occupation.

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.

Factors often considered by CIS when determining whether a position is a specialty occupation includes: 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)).

The first criterion to be considered is 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. After reviewing the record of proceeding, the AAO agrees with the director's finding that the evidence fails to establish that the beneficiary would analyze, design, and redesign mechanical systems and electronic components of ultrasound equipment and evaluate product designs and design changes. The product brochure submitted by the petitioner reveals that it sells and services reconditioned ultrasound systems, some of which are "totally reconditioned to look and perform like brand new." The petitioner's press release indicates that it "sells new, demo and fully reconditioned ultrasound equipment" and sells "ultrasound probes, parts, peripherals, and DICOM networking products." These documents do not convey that the petitioner designs or redesigns mechanical systems and electronic components of ultrasound equipment. Thus, they do not support the petitioner's assertion that the beneficiary would analyze, design, and redesign mechanical systems and electronic components of ultrasound equipment or would evaluate product designs and design changes. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 AAO will not consider these duties in determining whether the proposed position qualifies as a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

The AAO finds that the proposed duties of testing reconditioned equipment; testing, repairing, and maintaining mechanical and electronic systems of reconditioned ultrasound equipment; and providing technical support to clients and engineering staff are similar to those of a medical equipment repairer, which the *Handbook* describes as follows:

Medical equipment repairers, often called *biomedical equipment technicians*, work on medical equipment such as defibrillators, heart monitors, medical imaging equipment (x rays, CAT scanners, and ultrasound equipment), voice-controlled operating tables, and electric wheelchairs.

The *Handbook* conveys that employers do not require medical equipment repairers to hold a baccalaureate degree in a specific academic field. It states:

Medical equipment repairers' training includes on-the-job training, manufacturer training classes, and associate degree programs. While an associate degree in electronics or medical technology is normally required, training varies by specialty. For those with a background in

electronics, on-the-job training is more common for workers repairing less critical equipment, such as hospital beds or electric wheelchairs. An associate or even a bachelor's degree, often in medical technology or engineering, and a passing grade on a certification exam is likely to be required of persons repairing more critical equipment, such as CAT scanners and defibrillators. Some repairers are trained in the military. New repairers begin by observing and assisting an experienced worker over a period of 3 to 6 months, learning a single piece of equipment at a time. Gradually, they begin working independently, while still under close supervision. Biomedical equipment repairers are constantly learning new technologies and equipment through seminars, self-study, and certification exams.

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

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

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to establish that the particular position is so complex or unique that it can be performed only by a person with a degree in a specific academic field. As stated before by the AAO, the proposed duties are similar to those of a medical equipment repairer, which does not require a bachelor's degree in a specific academic field. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): 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 in a specific academic field.

The petitioner has provided no evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that it normally requires a degree or its equivalent for the proposed position.

To satisfy the criterion 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 the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific academic field. The proposed position is akin to a medical equipment repairer, which does not require a bachelor's degree in a specific academic field. As such, the petitioner fails to 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 in a specific academic field, the 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.

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.

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