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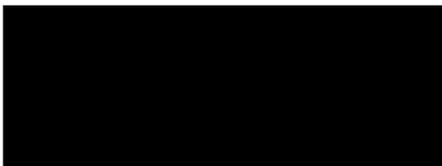
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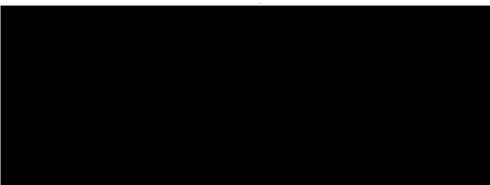


FILE: EAC 06 169 53262 Office: VERMONT SERVICE CENTER Date: OCT 29 2007

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner services and repairs electronic vending machines. It claims to employ 65 individuals and to have \$7,500,000 in gross annual income. It seeks to employ the beneficiary as an electrical engineer. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner asserts that the proffered position requires a bachelor's degree and that the director's decision is in error.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 17, 2006 with supporting documentation; (2) the director's May 26, 2006 request for further evidence (RFE); (3) the petitioner's June 29, 2006 letter in response to the director's RFE; (4) the director's July 27, 2006 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as an electrical engineer. Evidence of the beneficiary's duties includes the petitioner's May 13, 2006 letter in support of the petition. The petitioner stated:

[The beneficiary's] duties will include, but [are] not limited to, research, design, and supervise contractor manufacturers to develop and test, maintain and repair electronic components and systems, particularly electrical and/or electronic circuits and components for use in different vending machines, for commercial industrial use, utilizing knowledge of electrical and/or electronic theory and materials properties.

In response to the director's RFE, the petitioner acknowledged: "prior industry standards did not dictate a degree in engineering but the vending industry has advanced rapidly into new technology." The petitioner explained that the vending machine industry had advanced into DEX (Data Exchange) technology requiring computerized readings for accountability and "[e]ach equipment manufacturer has its own specifications to retrofit the equipment to DEX, thus, increasing the complexities of merging our equipment to the DEX technology." The petitioner noted that the vending industry "is void of needed qualified technicians to make the conversion." The petitioner added that the beneficiary's responsibilities would include:

[S]upervising a staff of approximately 15 – 20 personnel in the Service Department with emphasis on teaching our staff to test, maintain and repair electronic components in the shop and on location. He would research new technology for our industry, design compatible components for equipment and have responsibility to troubleshoot and repair circuit boards.

The record includes an excerpt from a vending machine industry article that indicated the DEX technology had received international consensus support and that DEX designers and equipment engineers had now agreed on a common linkage. The article indicated that vending machines are now manufactured as DEX-enabled and are often labeled as DEX compliant.

On July 27, 2006, the director denied the petition. Upon review of the petitioner's description of the position, the nature of the petitioner's business, and the Department of Labor's *Occupational Outlook Handbook's*, (*Handbook*) discussion of the educational requirements for Electrical and Electronics Installers and Repairers and Coin, Vending, and Amusement Machine Services and Repairers, the director found the evidence insufficient to establish the proffered position as a specialty occupation. The director acknowledged the petitioner's desire to employ the beneficiary to help the company move forward, but found that the petitioner's desire did not establish the position as a specialty occupation. The director concluded that the evidence of record did not establish the proffered position as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner asserts that the petitioner is attempting to fill a newly created position to maintain its competitive edge within the industry. Counsel indicates that each individual manufacturer must reassemble and retrofit its equipment to be compatible with DEX technology and that DEX technology requires an individual who can understand computerized information in order to service and operate the vending machines effectively. Counsel contends that because of the new technology, other companies within the vending industry will also need to hire engineers with education and experience similar to the beneficiary's education and experience in order to remain profitable and competitive. Counsel cites a district court decision for the supposition that CIS must defer to the needs of the employer as explained and offered by the employer with its knowledge of the evolution and advancement of its industry, rather than base a CIS decision on the *Handbook*.

Counsel paraphrased the petitioner's initial description indicating that the beneficiary's typical workweek will include:

[S]upervising a staff of 15 to 20 personnel, researching and implementing new technology for the company, designing compatible components for their equipment and troubleshooting and repairing circuit boards. Additionally, [the beneficiary] will be in charge of retrofitting their equipment with new DEX technology.

Counsel concludes that the evidence demonstrates that the beneficiary's body of highly specialized knowledge and bachelor's degree in engineering are required to effectively supervise and train the petitioner's service department so that the personnel can operate the machinery in the petitioner's inventory using the latest DEX information.

To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

To enable the adjudicator to determine whether a particular position incorporates the duties of an engineer or a skilled technician, the petitioner must provide a comprehensive description of duties as those duties relate to the petitioner. In this matter, the AAO will review the general description of the duties of the proffered position in an

effort to ascertain whether the duties of the position comport with those of an electrical or electronics engineer, occupations considered specialty occupations.

The 2006-2007 edition of the *Handbook* indicates: "[e]ngineers apply the principles of science and mathematics to develop economical solutions to technical problems." The *Handbook* discusses the employment of electrical engineers as follows:

Electrical engineers design, develop, test, and supervise the manufacture of electrical equipment. Some of this equipment includes electric motors; machinery controls, lighting, and wiring in buildings; automobiles; aircraft; radar and navigation systems; and power-generating, -controlling, and transmission devices used by electric utilities. Although the terms "electrical" and "electronics," engineering often are used interchangeably in academia and industry, electrical engineers have traditionally focused on the generation and supply of power, whereas electronics engineers have worked on applications of electricity to control systems or signal processing. Electrical engineers specialize in areas such as power systems engineering or electrical equipment manufacturing.

The 2006-2007 edition of the *Handbook* reports that the duties of an electronics engineer include the following:

Electronics engineers, except computers, are responsible for a wide range of technologies, from portable music players to the global positioning system (GPS), which can continuously provide the location of a vehicle. Electronics engineers design, develop, test, and supervise the manufacture of electronic equipment such as broadcast and communications systems. Many electronics engineers also work in areas closely related to computers. However, engineers whose work is related exclusively to computer hardware are considered computer hardware engineers. Electronics engineers specialize in areas such as communications, signal processing, and control systems or have a specialty within one of these areas – industrial robot control systems or aviation electronics for example.

The 2006-2007 edition of the *Handbook* reports the duties of engineering technicians as follows:

Electromechanical engineering technicians combine fundamental principles of mechanical engineering technology with knowledge of electrical and electronic circuits to design, develop, test, and manufacture electrical and computer-controlled mechanical systems. Their work often overlaps that of both electrical and electronics engineering technicians and mechanical engineering technicians.

Turning to the educational requirements for these positions, the AAO observes that the position of an engineer is a specialty occupation; however, according to the *Handbook's* discussion of the educational requirements for the occupation of engineering technicians, it may be possible to qualify for certain engineering technician jobs without formal training, although most employers prefer to hire someone with at least a two-year associate degree in engineering technology. The general description of these three occupations, as well as the occupations of electrical and electronics installers and repairers and coin, vending, and amusement machine services and

repairers, as discussed by the director, provide only an overview of the occupations. As these occupations are generally related, it is necessary for the petitioner to describe the actual work to be performed by the beneficiary with specificity and to explain in detail how the demands of the proffered position require the theoretical and practical specialized knowledge obtained through a four-year course of study at the university level. Reciting conclusions will not replace a thorough discussion of the duties and responsibilities of the position.

In this matter, the petitioner's general description does not provide sufficient information to enable the AAO to determine whether the proffered position is an electrical engineer, an electronics engineer, an engineering technician, or one of the occupations discussed by the director. The AAO acknowledges that the petitioner's industry now includes new technology. The petitioner, however, has not provided evidence or documentation demonstrating that the individual in the proffered position will design, develop or supervise the manufacture of electrical or electronic equipment. The record suggests that the new DEX technology has already been designed and developed and that the individual in the proffered position will review the specifications of the new technology to retrofit and install the technology in the petitioner's vending equipment. The petitioner refers to the needed position as a technician, not an engineer, to make this conversion.

Moreover, although the individual in the proffered position will supervise and instruct the petitioner's service personnel, the petitioner has not provided evidence that such supervision and instruction require an academic degree rather than skill and experience with the petitioner's type of equipment. The AAO notes the petitioner's indication that the individual in the proffered position will design compatible components for the vending equipment. However, the petitioner has not described the mathematical methods the beneficiary would use or the tasks or steps the beneficiary would take in this regard. It is not possible to determine that designing compatible components to retrofit vending machines for DEX technology requires the application of knowledge and principles of electrical and/or electronics theory rather than knowledge of electrical and electronic circuits. The AAO is unable to conclude from the petitioner's general overview of the position that the proffered position involves the theoretical and practical application of a body of highly specialized knowledge evidenced by the attainment of a bachelor's or higher degree in a specific specialty.

The petitioner's general description of the proffered position does not provide sufficient information regarding the actual duties of the position to establish that the duties are those of an engineer. A petitioner cannot rely on general statements such as those described in *Handbook* when discussing the duties attached to specific employment. When establishing a position as a specialty occupation, a petitioner must provide enough substantive detail to enable an adjudicator to determine whether the position is that of an engineer or of a skilled technician. Again, the petitioner's description of duties is too general to demonstrate that the duties incorporate the theoretical and practical application of a body of highly specialized knowledge that requires the 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. Going on record without supporting documentary evidence is not sufficient for purposes 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)).

The AAO acknowledges counsel's reference to the district court decision regarding deference to the employer's explanation of its industry and its expectations of the proffered position. However, when the description of duties is general, the explanation of the skill demanded is deficient, and the record suggests that the petitioner actually

requires the services of a technician, the AAO is unable to conclude that the proffered position is a specialty occupation. Moreover, CIS is not required to accept any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS must rely on a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary in relation to its business and what the proffered position actually requires, in order to analyze and determine whether the duties of the position require a baccalaureate degree in a specialty.

The AAO routinely relies on the *Handbook* for the educational requirements of particular occupations. The AAO finds that the petitioner has not sufficiently described employment that incorporates the tasks of an engineer. With the lack of detail regarding the actual daily tasks of the proffered position, the AAO is unable to determine that the tasks of the proffered position are of sufficient complexity to require the minimum of a baccalaureate or higher degree or its equivalent in a directly related specialty. As the record in the instant matter does not offer a meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of a specialty occupation. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. The petitioner acknowledges the DEX technology is new and notes that the industry currently does not have information regarding the education level of technicians involved in the new technology. Thus the record does not contain evidence of an industry-wide educational standard for skilled technicians involved in applying the DEX technology. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative the petitioner may offer evidence to establish that the proffered position is so complex or unique that only an individual with a degree can perform the duties of the position. In this matter, the AAO finds again that the description of the duties is too general to determine that the proffered position incorporates complex or unique elements so that only a degreed individual in a specific discipline could perform the duties of the position. The petitioner has not established that the proffered position is a specialty occupation by distinguishing the position from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) whether the employer normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In this matter, again as the technology is new, the petitioner notes that it has not previously hired an individual to fill the proffered position. The AAO observes, in addition, that while a petitioner may believe that a proffered position requires a degree or want the position to be filled by an individual with a degree; the petitioner's opinion and desire do not establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual

with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) whether 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. Again, the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. Without a meaningful list of duties related to its specific business operations, a petitioner may not establish that such duties are either specialized or complex. The position, as described, does not represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical skilled technician. Without a meaningful list of duties related to its specific business operations, the petitioner has not established that the generally described duties are either specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reason. 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 met that burden.

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