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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

File: WAC 01 180 50637 Office: CALIFORNIA SERVICE CENTER Date: JAN 27 2004

IN RE: Petitioner: [redacted]
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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R.§ 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, 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 is a communications firm with ten employees and a gross annual income of $700,000. It seeks to temporarily employ the beneficiary as a senior switch tester. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, the petitioner submits a letter and copies of documents already on the record. The petitioner does not include any new evidence for the record on appeal.

Section 214(i)(1) of the Immigration and Nationality Act(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:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

The record reflects that the duties of the proffered position involve the installation and testing of telecommunications equipment for the petitioner's customers. The beneficiary would also be required to train, instruct, and lead employees.

In his January 31, 2002 decision, the director noted that the specific skills essential to the installation and testing of telecommunications equipment, as outlined by the petitioner, are not skills which could only be acquired through the equivalent of a baccalaureate level of education. On appeal, the petitioner states that because the proffered position requires complex skills which are difficult to acquire, it should be classified as a specialty occupation.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered below.

The duties of the proffered position are comparable to those of telecommunications equipment mechanics, installers, and repairers, as described in the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) 2002-2003 edition. Regarding 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the *Handbook* 2002-2003 edition at page 482 examines the educational requirements for the position of radio and telecommunications equipment installers and repairers. According to the *Handbook*, a bachelor's degree is not the minimum entry requirement for this field. Training sources include two-year and four-year degree programs in electronics or communications, trade schools, equipment and software manufacturers, and the military. To the extent that a baccalaureate or higher degree or its equivalent is not required for entry into the position of telecommunications workers, specifically switch testers, the proffered position is not a specialty occupation.

With regard to the second and third criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that the degree requirement is common to the telecommunications equipment industry in parallel positions, and that the employer normally requires a degree or its equivalent for its project managers, to date, the petitioner has submitted no evidence to establish either criterion.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely that 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, it is acknowledged that the proffered position appears to include certain supervisory functions. However, the description provided by the petitioner of the beneficiary's work duties does not document that the duties of the proffered position are any more specialized or complex than the duties of any other telecommunications project manager. Without more compelling testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

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