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U.S. Citizenship
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Services

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JUN 29 2007

FILE: WAC 05 198 51448 Office: CALIFORNIA SERVICE CENTER Date:

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.


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 is a cellular telephone merchant distributor and service center. It seeks to employ the beneficiary as a part-time electronics engineer. The petitioner, therefore, 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching 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) consistently 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply 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.

The petitioner seeks the beneficiary’s services as a part-time electronics engineer. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s June 24, 2005 cover letter in support of the petition; and counsel’s December 5, 2005 response to the director’s request for evidence. As stated by the petitioner, the proposed duties are as follows:

He will confer with engineers, customers, and others to discuss existing or potential telecommunication equipments [sic] and wireless products. He will design, implement, maintain, and improve electrical instruments, equipment, and products for commercial sale. He will coordinate manufacturing, installation of systems, and testing activities to ensure compliance with specifications, codes, and customer requirements. He will perform detailed calculations to compute and establish installation standards and specifications of special programs to be used on the cellular phones. He will then inspect completed installations and observe operations, to ensure conformance to design and equipment specifications and compliance with operational and safety standards. As needed, will plan and implement research methodology and procedures to apply principles of electrical theory to each product. Prepare specifications for purchase of materials and equipment. Supervise and train project team members as necessary. Investigate and test vendors’ and competitors’ products.

The director found that the proffered position was not a specialty occupation because the job is not a bona fide electronics engineer position. The director found further that the petitioner, which sells cellular phones, provided none of the requested evidence pertaining to its products and/or services. The director also found that the record does not establish that the beneficiary will design, implement, maintain, and improve electrical instruments, equipment, and products for commercial sale.

On appeal, counsel states, in part, that the petitioner, which not only sells cellular phones but also remanufactures and refurbishes them for re-sale, has established that the proffered position meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the proffered electronics engineer position is a specialty occupation, as the proposed duties entail "extensive mathematical and engineering calculations." Counsel also states that the evidence of record meets "the **standard of proof and burden of proof** in establishing a prima facie case that there is a **reasonable, credible and bona fide offer of employment** . . ." Counsel states that the supporting evidence includes job postings from similar businesses.

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 turns first to 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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which is primarily that of an electrical and electronics repairer, is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, under the category of Electrical and Electronics Installers and Repairers, indicates that a baccalaureate or higher degree, or its equivalent, is required for an electrical and electronics repairer job. Further, although information on the petition reflects that the petitioner was established in 1996, and has 25 employees and a gross annual income of \$1 million, the petitioner provides no evidence in support of these claims, such as federal income tax returns and quarterly wage reports. 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)).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for electronics engineers. There is no evidence, however, to show that the employers issuing those postings are similar to the

petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for electronics engineers in the manufacturing industry. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertisements, such as: developing mobile multimedia products, generating engineering drawings, and providing technical support of manufacturing and production logistics. Rather, the description of duties for the proffered position corresponds most closely to that of an electrical/electronics repairer. Thus, the advertisements are not probative.

The record does not demonstrate that the proffered position is more complex or unique than an electrical and electronics repairer position. As observed above, the *Handbook* does not report that an electrical and electronics repairer requires a degree in a specific specialty. The AAO does not find that the proposed duties exceed the scope of a typical electrical and electronics repairer. Counsel's statement that the petitioner not only sells cellular phones but also remanufactures and refurbishes them, is noted; however, the remanufacturing and refurbishing duties that comprise the proffered position do not indicate the necessity for a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty.¹

The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard for an electrical or electronics repairer position.

For the reasons discussed above, the petitioner has not satisfied any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel submits the petitioner's job posting for the proffered position that reflects the requirement of a bachelor's degree. The AAO notes here that, regardless of any degree requirement imposed by the petitioner, the evidence of record does not substantiate a need for at least a bachelor's degree in a specific specialty.² As observed above, CIS must examine the ultimate

¹ An Internet search defines "remanufactured product" at <http://www.mmd.admin.state.mn.us/mn06008.htm> as follows: Any product diverted from the supply of discarded materials by refurbishing and marketing said product without substantial change to its original form. An Internet search defines "refurbish" at http://whatis.techtarget.com/definition/0,,sid9_gci350111,00.html as follows: To renew or to restore to a new condition and/or appearance.

² The AAO observes the petitioner's advertisement for the proffered position indicates only that a bachelor's degree is required and does not specify the degree should be in a specific discipline. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close corollary between the required specialized studies and the position. When a job requires only a generalized degree or indicates that a range of degrees, without further specification, is sufficient the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). The AAO further notes that the petitioner's job advertisement indicates the main emphasis of this position is on developing opportunities with wireless

employment of the alien and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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 interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. In this regard, the petitioner fails to establish that the proffered position entails the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or the equivalent, in a specific specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

On appeal counsel states, in part:

The complexity of analyzing a problem on each brand/model, formulating solutions to the problems, developing a technical manual and then ensuring that [the] technical support staff are trained and prepared to handle/solve these problems cannot be overly emphasized. An ordinary salesperson or technical support staff will be inept or unable to even understand or comprehend the technical engineering problems involved in one single cellular phone, not to mention at least a Million dollars worth of cellular phones being sold by the Petitioner each year.

The information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by electrical and electronics installers and repairers, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. Also, in regard to the proposed duties that relate specifically to remanufacturing and refurbishing skills, the petitioner has not demonstrated that these activities elevate the complexity of the proffered position to require a bachelor's degree in a specific specialty.

carriers, expanding wireless technology mainly GSM, CDMA and TDMA, and that the incumbent should have the ability to understand concepts and communicate at a technical level. This description does not incorporate the duties of remanufacturing or refurbishing cellular phones. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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