

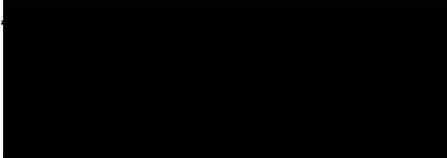
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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 03 128 53172 Office: CALIFORNIA SERVICE CENTER Date: *JAN 30 2008*

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Director  
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 construction company that seeks to employ the beneficiary as an electrical 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 because the proposed position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 bachelor's or higher degree, but one in a specific specialty that is directly related to the proposed position.

The record of proceeding before the AAO contains: (1) Form I-129 with supporting documentation, including a company support letter; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE, including the beneficiary's original college transcripts; (4) the director's denial letter; and (5) Form I-290B with brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an electrical engineer. Evidence of the beneficiary's duties includes the Form I-129 with attachments, including the company support letter and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that entail:

- researching and analyzing specifications to determine the best method of the design of electrical equipment, facilities, components, products, and systems for the petitioner's purposes;
- designing systems and controls;
- insuring the installation proceeds in accordance with engineering design and specifications;
- coordinating operations, maintenance and repair activities to obtain optimum utilization of systems;
- developing applications of controls, instruments, and systems for the petitioner's uses;
- directing activities to ensure that manufacturing, construction, installation, and operational testing conform to functional specifications and requirements; and
- directing and coordinating operation, maintenance, and repair of equipment and systems.

The director requested that the petitioner submit the following: a detailed job description including specific duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work; an explanation of why the work requires a person with a college degree; an exact description of the systems and equipment the beneficiary would be working with; evidence that the position meets one of the specialty occupation criteria; copies of present and past job announcements for the proposed position; and the beneficiary's original college transcripts.

In response, the petitioner submitted the beneficiary's original college transcripts, a job description similar to the one originally provided, an explanation of why the proposed position is a specialty occupation, and five job announcements for electrical engineers at other businesses.

The director concluded that the position was more like that of an electrician than of an electrical engineer, and that the occupation of electrician is not a specialty occupation. The director pointed to a brochure the petitioner submitted that showed that the petitioner employed an electrician but no electrical engineer.

On appeal, counsel states that the proposed position is that of an electrical engineer - a specialty occupation. The petitioner further asserts that, due to its expanding business, it now requires the services of an electrical engineer, when it did not in the past.

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 proposed position is not a specialty occupation.

To determine 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 highly specialized knowledge and the attainment of a bachelor's degree in a specific field of study as the minimum for entry into the occupation.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. A review of the job descriptions for electricians and electrical engineers in the *Handbook* reveals that the proposed job duties are most closely aligned with those of an electrician working for a residential and commercial construction company, such as working with blueprints to wire a building's electrical system, and installing, maintaining and repairing electrical equipment. The duties that the *Handbook* describes for electrical engineers, who "design new products, write performance requirements, and develop maintenance schedules," materially exceed the duties proposed for the beneficiary. In this regard, it is noted that the petitioner provided no examples of, or concrete details about, the electrical design work cited in the list of proposed duties. The petitioner provides no concrete details from which the AAO can conclude that any of the proposed duties requires at least a bachelor's degree in electrical engineering or a related specialty.

Counsel asserts that the proposed position is that of an electrical engineer. In order to substantiate this, counsel submits the entries from the *Handbook* for electricians and electrical engineers and a list of references for electrical projects the petitioner has completed, including work on several schools, a government agency, and a commercial building. These documents do not support counsel's assertion that the proposed position is more like an electrical engineer and less like an electrician. The *Handbook* entries merely describe the different duties that electricians and electrical engineers perform. They do not independently establish that the proposed position is that of an electrical engineer. The list of references for completed electrical projects also does not support counsel's assertion. If anything, the list confirms that the petitioner has been able to complete projects with the electrician it already has on staff and in no way substantiates the need to hire a full-time electrical engineer. Counsel asserts that the petitioner needs an electrical engineer because of an increased number of projects it intends to work on. This increase in the volume of work the petitioner anticipates might justify the need to hire another electrician, in addition to the one already on staff. It does not reflect a change in the nature of petitioner's work that might give rise to the need to hire an electrical engineer. Thus, the documentation that counsel has submitted is not probative. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To determine whether the proposed position qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. 214.2(h)(4)(iii)(A)(I) - a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. To determine whether or not this criterion has been established, the AAO turns to the *Handbook's* discussion of the educational requirements for electricians. No evidence in the *Handbook* indicates that a bachelor's or higher degree, or its equivalent, is required for a job as an electrician. Instead, it appears that individuals with proven electrical skills may be hired solely on the basis of training or experience. The *Handbook* also indicates that, under the supervision of experienced electricians, apprentices learn to install, connect, and test wiring, outlets, and switches, as well as set up and draw diagrams for entire electrical systems. As a result, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such

companies “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 five internet job announcements provided by the petitioner do not support the proposition that the residential and commercial construction industry requires that their electricians hold bachelor’s degrees in electrical engineering or related fields.

Despite counsel’s assertion that the advertisers are “companies like the [p]etitioner,” four of the announcements were issued by a variety of employers outside the construction industry, including a heavy industrial power plant, a defense and aerospace systems supplier, and an industrial x-ray scanner manufacturer. The fifth announcement was issued by a firm devoted entirely to electrical engineering consulting. None of these announcements support the contention that it is an industry-wide practice for construction companies, similar in size and scope to the petitioner’s, to require a bachelor’s degree in electrical engineering for positions that are substantially similar to the one proposed here. In any event, the number of job announcements is insufficient to establish an industry-wide practice. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – the employer normally requires at least a bachelor’s degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner’s past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner suggests it recently created the proposed position due to an increase in business. The petitioner is therefore unable to provide evidence to establish its normal hiring practices for the proposed position. In the absence of an employment history for the proposed position, the petitioner failed to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The evidence of record does not establish either that this particular position is so complex or unique that it can be performed only by an individual with a degree (so as to satisfy the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)), or that the specific duties are so specialized and complex that their performance requires knowledge usually associated with at least a bachelor’s degree in a specific specialty (so as to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)). The evidence of record does not indicate that the proposed position is unique from or more complex than the usual range of electrician positions, which the *Handbook* indicates are performed by persons without a bachelor’s degree in electrical engineering or any related specialty. Therefore, the petitioner has not satisfied the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has also failed to demonstrate duties so specialized and complex as to be normally associated with a bachelor’s or higher degree in a specific specialty, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The evidence of record does not establish that the duties of the proposed position are more specialized and complex than electrician duties, which, as the *Handbook* indicates, are not normally associated with at least a bachelor’s degree in any specific specialty. Counsel does not point to any of the proposed duties to show that they are not those of an electrician but of an electrical engineer. Counsel submits no evidence to establish that the proposed duties are different than those of other electricians that work for residential and commercial construction companies similar to the petitioner’s. The *Handbook* indicates that electricians routinely learn the electrical trade by completing a 4- or 5-year apprenticeship program where they measure, fabricate, and install conduit, as well as install, connect, and test wiring, outlets,

and switches, and learn to draw diagrams for entire electrical systems. Counsel's unsupported claim of qualifying specialization and complexity is insufficient to meet the burden of proof that the position meets the criteria based on the complexity of its duties alone. *Matter of Obaigbena*.

As always, 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.