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U.S. Citizenship and Immigration Services

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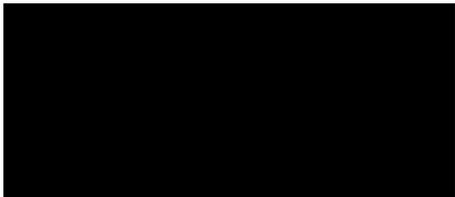


FILE: WAC 05 132 52618 Office: CALIFORNIA SERVICE CENTER Date: SEP 14 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California 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 an auto repair shop specializing in repairing cars, vehicle sales, and exporting automobiles and parts to Japan. It employs a staff of four and claims it had a gross annual income of approximately \$4.3 million when the petition was filed. It seeks to employ the beneficiary as a mechanical engineer. Accordingly, the petitioner 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).

On March 31, 2006, the director denied the petition determining that the record did not establish the proffered position as a specialty occupation and that the record did not establish that the beneficiary is eligible to perform the duties of a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional documentation.

The record of proceeding before the AAO contains: (1) the Form I-129 petition filed April 6, 2005 and supporting documentation; (2) the director's August 9, 2005 request for evidence (RFE); (3) counsel's September 20, 2005 response to the director's RFE; (4) the director's March 21, 2006 denial decision; and, (5) the Form I-290B and counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The first issue in this matter is whether the petitioner has established that the proffered position is a specialty occupation.

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 a mechanical engineer. On the Form I-129, the petitioner indicated the proposed job duties included the following:

Will research, plan, and design mechanical and electromechanical products and systems in relation to the auto parts business. Will also research and analyze data related to the auto repair business to determine the feasibility regarding design or application of new spare parts. Will design new auto products and innovative systems by utilizing the knowledge earned in mechanical engineering and by applying principles of engineering.

In the March 25, 2005 letter in support of the petition, the petitioner further described the duties as:

- 1.) Mechanical Research, Plan, and Design (30%) – [the beneficiary] will research, plan, and design mechanical and electromechanical products and systems in relation to our auto parts business. Likewise, he will direct and coordinate activities involved in the fabrication, operation, application, installation, and repair of our auto products and systems.
- 2.) Data Research and Analysis (20%) – [the beneficiary] will also research and analyze data related to our auto repair business to determine the feasibility regarding design or application of new spare parts with which we intend to penetrate this particular market even more.
- 3.) Design of New Products and Innovative Systems (30%) – [the beneficiary] will design new auto products and innovative systems by utilizing his knowledge earned in mechanical engineering and by applying principles of engineering. He will also direct activities of our engineering personnel in fabrication of test control apparatus and equipment.

- 4.) Development of Methods and Procedures for Testing (20%) – [the beneficiary] will support our development of methods and procedures for testing of our auto products or systems. Additionally, he will continue to evaluate the installations of our auto parts. He will be responsible for maintaining our quality control systems.

The petitioner noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* recognized the position of "engineer" as an occupation requiring a bachelor's degree and that America's Career Infonet emphasized that a bachelor's degree is the typical educational level for a position in mechanical engineering. The petitioner submitted five advertisements for the position of mechanical engineer from: (1) a fuel cell, fuel processor, and fuel cell stacks designer requiring a bachelor's of science degree in mechanical or chemical engineering; (2) a specialty vehicle manufacturer requiring a bachelor's degree in mechanical engineering; (3) a company engaged in meeting the service valve and control needs of its customers requiring a bachelor's degree in an unspecified discipline; (4) a medical device company requiring a bachelor's of science degree in mechanical engineering, biomedical engineering, or equivalent; and (5) a forensic engineering firm requiring a bachelor's degree in mechanical engineering. The petitioner also submitted an undated letter from the president of an auto repair shop employing four personnel that indicated its minimum hiring requirement for positions in finance/accounting, management, human resources, market research, public relations, mechanical engineering, and computers is a bachelor's degree in the related field. The petitioner submitted a second undated letter from a research and development company that designed and produced components for electronic and solar powered vehicles in which the president of the company indicated its minimum hiring requirement for positions in finance/accounting, management, human resources, market research, public relations, design engineering, mechanical engineering, and computers is a bachelor's degree in a related field.

In a September 20, 2005 response to the director's RFE, counsel for the petitioner asserted that it is an industry standard to require a baccalaureate degree in a related field for the position of mechanical engineer as demonstrated by the previously submitted letters. Counsel also asserted that the American Society of Mechanical Engineers and the National Academy of Engineering required a bachelor's degree as the minimum hiring requirement for positions in mechanical engineering and provided excerpts from both organizations. Counsel also submitted an excerpt from the Japanese Automobile Service Promotion Association describing the skills and certificates necessary for a car mechanic in Japan. Counsel further submitted a position evaluation prepared by [REDACTED] Associate Professor at the University of Arizona, Department of Systems and Industrial Engineering, dated September 4, 2005. [REDACTED] opined, based on the petitioner's description of duties of the proffered position, that the position is a specialty occupation as the position required specialized research and analysis duties in mechanical and electro-mechanical design and systems planning and development, application of detailed technical product knowledge and in-depth understanding of engineering and mechanical feasibility, automotive engineering and design, and related technical analysis and troubleshooting. [REDACTED] further opined that the proffered position necessitates that an individual be familiar with theoretical and academic concepts in mechanical engineering, engineering design, quality engineering, machine design, and related areas, concepts taught in bachelor's level classes or learned through progressive employment in these areas. Professor [REDACTED] concluded that the proffered position of mechanical engineer could not be performed without bachelor's level training in mechanical engineering or a related area.

The petitioner noted that it had not previously hired a mechanical engineer but that it was in the process of developing an expansion program and needed an individual to perform highly technical duties and to provide recommendations on how to improve the company's overall administrative and operational procedures.

On March 21, 2006, the director denied the petition determining that the petitioner had not sufficiently related the duties of the proffered position to its business operations and had not provided any evidence of its expansion plans. The director also determined that the record was insufficient to establish the proffered position as parallel to positions in similar organizations or to establish that the proffered position is so complex or unique that only an individual with a degree could perform the duties of the position. The director likewise found the record unpersuasive in establishing that the petitioner normally required a degree for the position or 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. The director concluded that the petitioner had not established that the proffered position satisfied any of the requirements for a specialty occupation.

On appeal, counsel for the petitioner references the previously submitted documentation and asserts that the petitioner not only used the title of the position or the petitioner's self-imposed standards, but actually proved that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. Counsel submits three additional letters from Performance Plus Wholesale, Tandem Concepts, and AJB International, Inc., indicating that a minimum of a baccalaureate degree is necessary for the position of mechanical engineer. The letters do not describe the business operations of the companies, do not describe the businesses' number or type of employee, and do not provide evidence that the businesses hire mechanical engineers.

The AAO has fully considered all the petitioner's evidence submitted and does not find the evidence or counsel's assertions persuasive. 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. In this matter, contrary to counsel's assertion, the petitioner has not established that the described duties of the position comprise the duties of a specialty occupation.

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

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines, as well as

power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

The petitioner's description corresponds generally to the *Handbook's* outline of the duties of a mechanical engineer. The petitioner indicates the beneficiary will research and design mechanical and electromechanical products and systems as related to the auto parts business as well as direct engineering personnel in the fabrication of test control apparatus and equipment. The petitioner also notes that the beneficiary will evaluate installations of auto parts, have responsibility for maintaining the petitioner's quality control systems, and will direct and coordinate activities involved in the fabrication, operation, application, installation, and repair of auto products and systems. However, as the director determined, the petitioner's general description is insufficient to substantiate that the beneficiary's actual duties comprise the duties of a mechanical engineer or any specialty occupation. CIS must examine the petitioner's business operations and endeavor to relate the generally described duties to the petitioner's business in order to determine if the proffered position is a specialty occupation.

In this matter, the petitioner has explained that it is a four-person auto repair shop specializing in repairing cars, vehicle sales, and exporting automobiles and parts to Japan. It provides an advertisement showing that Jimmy Auto Imports Body Service provides accident repair, including denting and scratching and glass replacement. The petitioner also provides a copy of its webpage partially in a foreign language. An accountant's compilation report shows that the petitioner receives income from the export of cars and parts. The petitioner also indicates its desire to penetrate the new spare parts market and that it is developing an expansion program and needs an individual to perform the technical duties and make recommendations on how to improve the company's overall administrative and operational procedures. However, the petitioner does not adequately differentiate its business operations from the operations of a standard auto repair shop that also sells cars. The record does not include sufficient information to conclude that the beneficiary's actual duties will correspond to the duties of a mechanical engineer rather than to an individual performing and supervising repairs and installations as well as maintaining the petitioner's quality control system.

The record does not provide information establishing that the petitioner will utilize the beneficiary as a mechanical engineer. For example, the petitioner indicates that the beneficiary will research and design mechanical and electromechanical products and systems but does not explain how these duties fit within its auto repair, export, and sales business. In addition, although the petitioner indicates that the beneficiary will direct engineering personnel in the fabrication of test control apparatus and equipment, the petitioner does not provide substantiating documentation that it employs other engineering personnel. Further, the petitioner does not detail the activities involved in fabrication, operation, application, installation, and repair of auto products and systems. It is not possible to conclude that the proffered position actually includes the duties of a mechanical engineer rather than the duties of a skilled mechanic. The petitioner does not provide substantive evidence that the duties of the proffered position 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. References to the general responsibilities of an occupation without providing evidence of how the beneficiary will perform the tasks in relation to the petitioner's specific business is insufficient to establish that the duties are those of the duties of a specialty occupation.

The record does not include documentary evidence of the petitioner's expansion plans, does not include detail regarding its attempt to penetrate the spare parts business, and does not substantiate how the petitioner will use the beneficiary's services to carry out the tasks relating to these plans. The general information submitted with no language or documentary evidence connecting the nonspecific duties of the position to the petitioner's business is insufficient to establish the proffered position as a specialty occupation. 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 declines to accept a broad overview of an occupation as definitive of a particular position's daily duties. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise would require acceptance of any petitioner's generic description to establish that its proffered position is a specialty occupation. CIS relies 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 field.

The AAO finds that the petitioner has described an occupation that may or may not include the tasks of a mechanical engineer. The AAO does not, however, find sufficient information in the record to substantiate that the position's actual daily duties comprise the duties of a mechanical engineer. As the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and how those tasks specifically relate to the petitioner's auto repair and sale of spare parts and automobiles, the petitioner has not established that the proffered position requires a baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the position.

The AAO has considered the letters submitted from other repair shops that indicate the shops require a bachelor's degree for various positions in finance/accounting, management, human resources, market research, public relations, design engineering, mechanical engineering, and computers, as well as the letters submitted on appeal. The AAO observes that the initial letters submitted are too general to establish that the proffered position is a specialty occupation. The writers do not describe the duties of a mechanical engineer so that the AAO may examine whether those duties actually comprise the duties of a mechanical engineer. The writers of the letters do not provide evidence that they have hired individuals for positions similar to the proffered position and required that the individual in the position have a bachelor's degree in a specific discipline. The three letters submitted on appeal indicate that a baccalaureate degree is necessary for the position of mechanical engineer. The AAO does not disagree. However, in this matter, as determined above, the petitioner has not established that its proffered position comprises the duties of a mechanical engineer. Moreover, as previously indicated, the letters submitted on appeal do not describe the business operations of the three companies, do not describe the businesses' number or type of employee, and do not provide evidence that the businesses hire mechanical engineers. Again, 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. at 165. The letters submitted are not probative in this matter on the issue of whether the proffered position is a specialty occupation.

The AAO also acknowledges the excerpts from the American Society of Mechanical Engineers and the National Academy of Engineering. Once again, however, the petitioner has not provided sufficient evidence to establish that the proffered position as it relates to its auto repair business is that of a mechanical engineer. The AAO further acknowledges the excerpt from the Japanese Automobile Service Promotion Association describing the skills and certificates necessary for a car mechanic in Japan. The excerpt does not pertain to the duties of a mechanical engineer and thus is not probative in this matter.

The AAO has also considered the position evaluation prepared by [REDACTED] Associate Professor at the University of Arizona, Department of Systems and Industrial Engineering, dated September 4, 2005. [REDACTED] does not indicate that he interviewed the petitioner, assessed the extent of the petitioner's business operations, or visited the petitioner's location. Rather, the professor appears to have relied solely on the petitioner's general description of the occupation of mechanical engineer and not on the actual position in relation to the petitioner's business operations when offering his opinion. There is thus an inadequate factual foundation to support the professor's opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Again, the AAO agrees that the normal requirement for the occupation of mechanical engineer is that of a bachelor's degree, but that in this matter, the petitioner has not established the proffered position includes the actual duties of a mechanical engineer in its auto repair, spares parts and export business.

As the record in the instant matter offers no meaningful description of the proffered position's responsibilities as those duties relate to the petitioner's business operations, the petitioner has not established that the duties of the position actually incorporate the duties of a mechanical engineer. 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. In the instant matter, the petitioner submitted five job announcements for positions labeled mechanical engineer from a specialty vehicle manufacturer, a fuel cell, fuel processor, fuel cell stacks designer, a company involved in service valve and controls, a medical device company, and a forensic engineering firm. The petitioner has not explained how its auto repair business is similar to the organizations advertising for the position of mechanical engineer. Likewise, the petitioner has not offered evidence that its particular position is parallel to the positions in the advertisements. The petitioner has not submitted job advertisements for positions that can be determined to be parallel to the proffered position or that the companies advertising for "mechanical engineer" are companies similar to the petitioner. The evidence of record is insufficient to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. As the record does not offer a meaningful description of the beneficiary's duties as the duties relate to the petitioner's auto repair shop, the AAO is unable to determine that any of the duties would require specialized or unique knowledge obtained only through study that results in a bachelor's or higher degree in a specific discipline. The AAO again acknowledges the letters submitted on behalf of the petitioner and the position evaluation but does not find the letters or evaluation probative for the reasons discussed above. The petitioner has failed to provide sufficient evidence to establish the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring degreed candidates for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally 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. The petitioner indicates that it has not previously hired individuals to fill this position and has not provided sufficient evidence of its claimed expansion and the duties required to penetrate the spare parts market; thus the petitioner has not established this criterion. The AAO also notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than 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. The petitioner has not provided sufficient evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, the AAO observes that the petitioner has not provided a detailed description of the proposed duties. The AAO cannot conclude that the beneficiary's actual duties incorporate duties that are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As the position is generally described and does not provide sufficient detail of how the petitioner will utilize the beneficiary's services in its repair and spare parts shop, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the petitioner has not established that its proffered position is a specialty occupation.

The second issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains the following documentation regarding the beneficiary's education and work experience:

The beneficiary's certification of graduation from Chiba Prefecture Choshi Commercial High School on March 9, 1991;

The beneficiary's resume listing employment: as a chemical engineer/gas plant operator from April 1991 to March 1995; as a mechanical engineer from April 1995 to June 2000; as a mechanical engineer from July 2000 to October 2003; and as an accounting manager/market researcher trainee from February 2004 to present;

A letter from the beneficiary's employer from April 1991 to March 1995 indicating the beneficiary as a chemical engineer/gas plant operator was responsible for: mixing, crushing heat transfer, distillation, and drying operations; developing processes to separate

components of liquids or gases or generating electrical currents, using chemical processes; developing safety procedures; adjusting temperature, pressure, vacuum, level, flow rate, or transfer of gas; and observing pressure, temperature, level, and flow gauges to ensure standard operation.

A letter from the beneficiary's employer from April 1995 to June 2000 indicating that the beneficiary as a mechanical engineer was responsible for: maintaining and repairing engines of cars; directing and coordinating fabrication activities to ensure products and systems conform with the engineering design; controlling the quality hydraulics, controls and instrumentation; recommending design modifications to eliminate engine or system malfunction; inspecting and assuring the quality of various types of transportation engines;

A letter from the beneficiary's employer from July 2000 to October 2003 indicating that the beneficiary as a mechanical engineer was responsible for: maintaining and repairing engines of cars; directing and coordinating fabrication activities to ensure products and systems conform with the engineering design; controlling the quality hydraulics, controls and instrumentation; recommending design modifications to eliminate engine or system malfunction; inspecting and assuring the quality of various types of transportation engines;

A certification of automobile mechanic indicating that the beneficiary had passed the examination according to the Automobile Mechanic Examination Regulation on March 22, 1999;

A certificate that the beneficiary had completed courses on mechanical technology of 2ND grade gasoline vehicle on April 5, 1999; and

An evaluation of the beneficiary's training and experience prepared by [REDACTED] and professor of mechanical engineering at the University of Alaska Fairbanks, dated September 1, 2004.

In the September 1, 2004 evaluation, [REDACTED] found that the beneficiary "had completed increasingly responsible positions of employment in the field of engineering technology, characterized by the practical and theoretical application of concepts typically comprising the curriculum of a bachelor's-level program in engineering technology." [REDACTED] further opined: "[the beneficiary] has completed no less than twelve years and seven months of progressively responsible qualifying work experience and training in engineering technology and related areas, characterized by increasingly advanced responsibilities and complexity under the supervision of managers, and together with peers, at a bachelor's-level of practical experience." [REDACTED] noted that the conclusions reached were based "on the review of detailed letters of reference from [the beneficiary's] former employers, as well as documents pertaining to his post-secondary training." [REDACTED] provided a synopsis of the employers' letters submitted in support of this petition. [REDACTED] concluded that due to the concentrated nature of the beneficiary's work experience and training in engineering technology, the beneficiary's background would be the equivalent of completion of academic studies toward a bachelor's of science degree in engineering technology. Appended to the evaluation is a letter from the interim dean of

the college of science, engineering, and mathematics, University of Alaska Fairbanks, noting that [REDACTED] is authorized to recommend college-level equivalency credit for training and experience.

The director determined that the petitioner had not provided sufficient evidence to establish that the University of Alaska Fairbanks had a program for granting college-level credit for training and/or employment experience. The director observed that the petitioner had not submitted the university catalog describing the program and how many credits the university or faculty could grant. Upon review of the letters from the beneficiary's prior employers, the director found that the positions although labeled "mechanical engineer" only included duties relating to the maintenance and repair of all types of cars. The director determined that the record did not persuade that the beneficiary's work experience and training are equivalent to a bachelor's degree in mechanical engineering or a bachelor's degree in engineering technology.

On appeal, counsel for the petitioner asserts that the evaluation submitted by [REDACTED] is the most suitable authority to assess the academic equivalency of the beneficiary's foreign credentials.

The beneficiary does not hold a United States baccalaureate degree or higher, does not hold a foreign degree determined to be equivalent to a United States baccalaureate or higher, and does not hold an unrestricted State license, registration or certification which authorizes the beneficiary to fully practice a specialty occupation. Thus, CIS must determine whether the beneficiary is qualified to perform the duties of a specialty occupation pursuant to the requirement described at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has

achieved recognition of expertise in the specialty occupation as a result of such training and experience.

On appeal, counsel for the petitioner asserts that the [REDACTED] evaluation is the most suitable assessment of the beneficiary's qualifications. As the director observed, however, the record does not contain evidence that the University of Alaska Fairbanks has a program to grant a college degree based solely on an individual's work experience. In addition, the AAO finds [REDACTED]'s evaluation cursory and lacking analysis of the beneficiary's actual work experience. [REDACTED] bases her evaluation on the letters from the beneficiary's prior employers and yet opines that the beneficiary "had completed increasingly responsible positions of employment in the field of engineering technology, characterized by the practical and theoretical application of concepts typically comprising the curriculum of a bachelor's-level program in engineering technology."

Upon review of the letters from the beneficiary's foreign employers, the AAO finds that the first letter indicating the beneficiary held a position of chemical engineer/gas plant operator describes a technician in a gas plant responsible for operating the devices used to control the mixture and flow of gas. The letter does not provide evidence that the beneficiary, with a high school education, was performing the duties of a chemical engineer who in the United States would be required to have a four-year university degree. The letter also does not reveal the educational levels of the beneficiary's peers, supervisors, or subordinates. Likewise, the letters from the beneficiary's two previous employers indicating the beneficiary's position was a mechanical engineer; actually described the duties of a car mechanic. Although the beneficiary obtained certain certifications and training and the record suggests became a skilled mechanic, a "mechanic" position is not similar but rather is vastly different than a mechanical engineering position. In addition, neither of the letters describing the beneficiary's mechanic's duties reveals the educational levels of the beneficiary's peers, supervisors, or subordinates. Further as the beneficiary continued to perform the same duties for both employers from April 1995 to October 2003, the employers do not describe increasingly responsible positions of employment in the field of engineering technology. The AAO finds that [REDACTED] evaluation fails to adequately analyze the beneficiary's actual duties for the beneficiary's three foreign employers and fails to evaluate those duties in relation to actual coursework at a four-year university in the United States. The Interim Dean at the College of Science, Engineering and Mathematics, University of Alaska Fairbanks indicates in her April 27, 2004 letter that the University of Alaska Fairbanks has a process for granting college-level credit based on a candidate's educational credentials, training, and/or employment experience; the letter does not further describe the University's "process." The AAO questions whether the University of Fairbanks Alaska would accept such a cursory evaluation in place of actual engineering coursework. The evaluation submitted is insufficient to establish the beneficiary's work experience as equivalent to a baccalaureate degree obtained through a four-year course of study at an accredited university in the United States. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The petitioner has not presented credible evidence that the beneficiary is qualified to perform the duties of a specialty occupation on the basis of criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The petitioner has not presented evidence that the beneficiary is qualified to perform the duties of a specialty occupation on the basis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), (3), or (4). Thus, the AAO must evaluate the beneficiary's qualifications under the fifth criterion.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As noted above, evidence of the beneficiary's prior work experience is contained in three letters from his three prior employers. As described above, the letters do not describe the duties of a chemical or mechanical engineer. Neither do the letters evidence that the beneficiary gained increasingly responsible positions while working in his capacity as a gas plant operating technician or as a mechanic. Neither do the letters provide information about the credentials of the beneficiary's peers, supervisors, or subordinates. Thus the information regarding the beneficiary's prior training and/or work experience is deficient as it does not describe training and/or work experience that includes the theoretical and practical application of specialized knowledge required by a specialty occupation, and does not indicate that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. In addition, the record does not contain evidence that the beneficiary's expertise has been recognized in one of the ways discussed above. The AAO again acknowledges [REDACTED] evaluation but questions [REDACTED] expertise in this particular field as the overview of the beneficiary's duties does not include duties comparable to coursework in a four-year university setting. Moreover, even if the AAO considered [REDACTED] recognized authority in this matter, which it does not, the petitioner must provide evidence of the beneficiary's expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this additional reason, the petition will not be approved.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

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