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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-01-259-57388 Office: California Service Center

Date: **DEC 16 2002**

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)

IN BEHALF OF PETITIONER:



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 the Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an auto body repair shop with 12 employees and a stated gross annual income of \$600,000. It seeks to employ the beneficiary as an electrician for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the nature of the beneficiary's proposed duties is so specialized and complex that a baccalaureate degree in a specific specialty is required. Counsel further contends that the proffered position most closely parallels that of an electrical engineering technician.

Counsel's assertion on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular

job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position in pertinent part as follows:

[The beneficiary] will be responsible in [sic] diagnosis of electrical malfunctioning automotive, trucks, heavy equipment trucks and machineries and buses. [The beneficiary] will be responsible in [sic] repairs and overhauls electrical systems in automotive and heavy equipment vehicles and machineries. Confers with customer to determine nature of electrical malfunction. Determines malfunction of electrical system by visual inspection and by use of testing devises [sic], such as oscilloscope, voltmeter and ammeter. Adjust ignition timing and measures, distributor breaker points gaps, using dwell meter or thickness gauge. Rebuilds electrical units, repairs defective wiring in ignition, lightings.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's contention that the proffered position most closely parallels that of an electrical engineering technician. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition,

at page 100, electrical engineering technicians help design, develop, test, and manufacture electrical and electronic equipment such as communication equipment, radar, industrial and medical measuring or control devices, navigational equipment, and computers. In contrast to the duties of an electrical engineering technician, the DOL describes the duties of an automotive service technician at page 488 of the Handbook as follows:

Automotive service technicians and mechanics. . . .
inspect, maintain, and repair automobiles and light
trucks with gasoline engines. . . .

When mechanical or electrical troubles occur, technicians first get a description of the symptoms from the owner. . . . To locate the problem, technicians use a diagnostic approach. First, they test to see if components and systems are proper and secure, and then isolate those components or systems that could not logically be the cause of the problem. Technicians may have to test drive the vehicle or use a variety of testing equipment, such as onboard and hand-held diagnostic computers or compression gauges, to identify the source of the problem. . . .

In modern repair shops, service technicians compare the readouts from diagnostic testing devices to the benchmarked standards given by the manufacturer of the components being tested. . . . The testing devices diagnose problems and make precision adjustments with precise calculations downloaded from large computerized databases.

The proffered position is clearly that of automotive service technician. The DOL states at page 488 of the Handbook:

The work of automotive service technicians and mechanics has evolved from simply mechanical to high technology. Today integrated electronic systems and complex computers run vehicles and measure their performance while on the road. Automotive service technicians have developed into diagnostic, high-tech problem solvers. Technicians must have an increasingly broad base of knowledge about how vehicles' complex components work and interact, as well as the ability to work with electronic diagnostic equipment and computer-based technical reference materials.

Nevertheless, the DOL does not indicate in the Handbook that automotive service technicians are normally required to have a baccalaureate degree in a specific specialty for entry into the occupation. Most training authorities strongly recommend that

persons seeking automotive service technician and mechanic jobs complete a formal training program in high school or in a postsecondary vocational school. Some service technicians, however, still learn the trade solely by assisting and learning from experienced workers. Many high schools, community colleges, and public and private vocational and technical schools offer automotive service technician training programs. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

Third, although counsel asserts that the requirement of a baccalaureate degree in a specific specialty is standard to the industry in parallel positions among similar organizations, no evidence has been provided to corroborate this assertion.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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 petitioner has failed to establish that any of the four factors 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.

ORDER: The appeal is dismissed.