

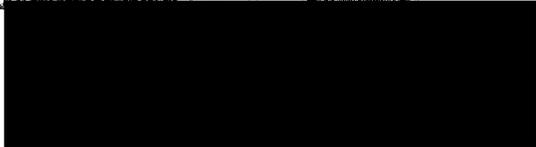


DA

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: LIN-00-271-52542 Office: Nebraska Service Center

Date: FEB 10 2003

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)

PUBLIC COPY

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a retail gas station operations business with 140 employees and a gross annual income of \$43,533,600. It seeks to employ the beneficiary as a mechanical engineer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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. On appeal, counsel states, in part, that the proposed duties, which include supervision of the company's technicians, and communication and interaction with other engineers and technical experts, could be performed only by a person with a baccalaureate degree.

Counsel's statement 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 as follows:

Repairing, maintaining and replacing damaged parts of all machines, including gas pumps and also doing auto repair for oil tankers, trucks and other mechanical devices owned by the company.

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 argument that the beneficiary is a mechanical engineer, an occupation that would normally require a bachelor's degree in engineering or a related field. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 114, the Department of Labor (DOL) describes the job of a mechanical engineer as follows:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices.

The record reflects that the petitioner, which is in the retail gas station business, employs 140 persons and has a gross annual income of \$43,533,600. The business in which the beneficiary is to be employed does not require the services of a mechanical engineer whose duties include complex and advanced engineering duties such as researching, developing, designing, manufacturing, and testing tools, engines, machines, and other mechanical devices.

The duties that the petitioner endeavors to have the beneficiary perform are similar to the duties of an automotive service technician. In contrast to the description of a mechanical engineer, at page 488 of the Handbook, the DOL describes the position of an automotive service technician, in part, as follows:

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.

The types of duties the petitioner ascribes to the beneficiary primarily fall within the scope of an automotive service technician rather than a mechanical engineer position. For example, the petitioner states that the beneficiary will be responsible for "[r]epairing, maintaining and replacing damaged parts of all machines, including gas pumps and also doing auto repair for oil tankers, trucks and other mechanical devices owned by the company." Such duties are not duties normally associated with a mechanical engineer.

According to the DOL at pages 489-490 of the Handbook, 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. In addition, some service technicians still learn the trade solely by assisting and learning from experienced workers. Experienced technicians who have leadership ability sometimes advance to shop supervisor or service manager. 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 such as mechanical engineering, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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.