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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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

[REDACTED]

FILE: LIN 01 051 54987

OFFICE: NEBRASKA SERVICE CENTER

DATE: JAN 02 2003

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

[REDACTED]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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
Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a watch repair company with 19 employees and an estimated gross annual income of \$1,000,000. It seeks to extend its employment of the beneficiary as a watchmaker/repairer for three additional years.

The director denied the petition because he found that the petitioner had failed to demonstrate that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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), 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) (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 knowledge 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) further 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.

In the initial petition, counsel for the petitioner stated that the duties of the proffered position are "watch making and repairs." With the petition, counsel submitted copies of the beneficiary's college transcripts and diploma, with translations into English by the petitioner's president. Counsel also submitted the report of an educational evaluator, who stated that the beneficiary's

education is the equivalent of a bachelor of science degree in mechanical engineering from an accredited institution in the United States.

Further still, counsel submitted a letter from the petitioner's president. That letter states that the proffered position requires a bachelor's degree in mechanical engineering or the equivalent.

The director requested that the petitioner submit additional evidence pertinent to the proffered position. The director requested evidence that the proffered position is a specialty occupation. The director also requested that the petitioner indicate which specific courses on the beneficiary's college transcripts are pertinent to the proffered position. In addition, the director requested a detailed description of the duties to be performed by the beneficiary.

In response, counsel submitted (1) an advertisement placed by the petitioner in Downtown Birmingham Magazine, (2) a letter from a C.P.A., dated March 16, 2001, stating that from 1997 to 2000 the beneficiary's sales doubled, (3) a list of the most expensive watches auctioned by [REDACTED]

(4) copies of service agreements with the petitioner for servicing watches by [REDACTED]

[REDACTED] (5) technical manual information pertinent to screw threads, (6) three articles from International Wristwatch magazine, (7) credential evaluations pertinent to two of the petitioner's employees, (8) paystubs of two of the petitioner's employees, (9) the diploma of one of the petitioner's employees, translated into English by the petitioner's president, (10) the beneficiary's work record from the former Soviet Union, (11) confirmation from the American Watchmakers-Clockmakers Institute that the beneficiary is a member of that organization, and (12) a letter from the petitioner's president in support of the petition.

The letter from the petitioner's president states that the 14 watchmaker/repairers in his shop ". . . are considered the foremost team of watchmaking professionals in the United States"

Counsel also submitted a letter in which she stated that the duties to be performed by the beneficiary include calibration and repair of watches, replacement of broken parts, and fabrication or reconstruction of unique hairsprings. Counsel declared that repair of sophisticated watches is so specialized and complex that it requires a bachelor's degree. Counsel further noted that although the beneficiary employs fourteen watchmakers, only four of them are considered master watchmakers. Counsel stated that all four of them, including the beneficiary, have degrees.

Counsel claimed that the following classes from the beneficiary's transcripts are salient to watchmaking and repairing: Calculus, Geometric Graphing, Calculating Technology, Physics, Theory of Mechanics, Material & Technology of Metal, Examination of Material, Theory of Machines and Mechanism, Interchangeability of Materials, Basic Construction of Machinery, Electronics, Process of Production and Automation, Basic Technology of Machinery, Hydraulics, Machinery of Automatic Production, Design of Cutting Instruments, Theory of Cutting (Instruments), and Technology of Basics Organization Design. Finally, counsel asserted that the evidence demonstrates that the proffered position is a specialty occupation.

The director denied the petition on the basis that the petitioner did not establish that the proffered position is a specialty occupation.

On appeal, counsel noted that the watches serviced by the petitioner are very expensive watches, both antique and modern high-tech, and again asserted that diagnosis and repair of such watches requires a bachelor's degree in mechanical engineering. Counsel noted that some of the antique watches serviced and repaired by the petitioner are unique and require fabricated or reconditioned parts, as parts are otherwise unavailable.

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Counsel's contention that the proffered position is a specialty occupation is unconvincing. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The Service often consults the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) when determining whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position. In the 2002 - 2003 edition of the Handbook at page 512, the DOL states the following about the training and educational requirements for precision instrument and equipment repairer positions, including watch and clock repairers.

Most employers require at least a high school diploma for beginning precision instrument and equipment repairers. Many employers prefer applicants with some postsecondary education. Much training takes place on the job.

Although the Handbook states that many employers prefer applicants with some postsecondary education, this does not indicate that a college degree is a requirement for entry into the field. To the contrary, it implies that some employers have no requirement, nor even a preference, that applicants have any college education at all. Neither the Handbook nor any evidence in the record offers any support for the proposition that a bachelor's degree is the minimum education necessary to become a watch repairer.

II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard include: whether the DOL's 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

The DOL's conclusions pertinent to a degree requirement for a watchmaker/repairer position were discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presented any evidence that any association of watchmakers/repairers has instituted a degree requirement for membership.

Counsel has amply demonstrated that the proffered position is complex, and possibly even unique. Counsel has not demonstrated, however, that it can only be held by a person with a college degree.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(a)(3).

The proffered position, as stated on the petition, is watchmaker/repairer. The petitioner does not state that all of the watchmaker/repairers in his office have bachelor's degrees.

In her response to the Request for Evidence, however, counsel distinguished between master watchmakers and other watchmakers. Counsel stated that only four of the watchmakers in the petitioner's shop are master watchmakers, and that all four of those master watchmakers possess bachelor's degrees. In a letter submitted with the petition in this matter, the petitioner stated that the proffered position requires a bachelor's degree in mechanical engineering or the equivalent.

The evidence presented indicates that the other three people designated by counsel as master watchmakers have (1) the equivalent of a master's degree in engineering with a specialty in radio engineering, (2) the equivalent of a bachelor's in electrical engineering with some credit toward a masters, and (3) an "engineer of technology" degree with a specialty in "natural and chemical coils." The record contains no evidence to demonstrate that those three disparate degrees are all equivalent to degrees in mechanical engineering.

Even if the proffered position is analyzed as a master watchmaker/repairer, rather than an ordinary watchmaker/repairer as was indicated on the petition, and even if the evidence is taken to mean that the proffered position demands a degree, the evidence does not indicate that the proffered position requires a degree in a specific specialty (e.g. mechanical engineering) or the equivalent.

IV. The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

As was stated above, counsel has demonstrated the complexity of the position. Counsel has failed, however, to demonstrate that the knowledge required by the proffered position is associated with the attainment of a bachelor's degree in a specific specialty, rather than, for instance, through experience.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge and whether the attainment of a bachelor's degree in the specific specialty is a requirement for entry into the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered watchmaker/repairer position requires the attainment of a bachelor's degree in a specific specialty.

Beyond the decision of the director, it is noted that none of the classes cited by counsel as bearing upon the proffered position are directly related to watchmaking/repairing. Some of those classes, Physics, Theory of Mechanics, Material & Technology of Metal, Examination of Material, and Theory of Machines and Mechanism for instance, are peripherally related to the proffered position. Others, notably Geometric Graphing and Hydraulics, are not even marginally related to watchmaking. If the proffered position were a specialty occupation requiring a degree in a specific specialty directly related to watchmaking or the equivalent of that degree, counsel has not submitted evidence sufficient to demonstrate that the beneficiary's degree would qualify him for the position.

Counsel has requested oral argument in this matter "to insure that any questions regarding the volume of material produced may be adequately explained and properly highlighted." A request for oral argument must set forth facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. 103.3(b). Oral argument will be denied in any case where oral argument will serve no useful purpose or where written material or representations will appropriately serve the interests of the affected party. Counsel has not explained why the pertinence to the matter at hand of her various submissions must be explained in person. Counsel has failed to demonstrate that oral argument will serve any purpose or that written material cannot appropriately serve the interests of the petitioner and beneficiary. Accordingly, the request for oral argument is denied.

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.