

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



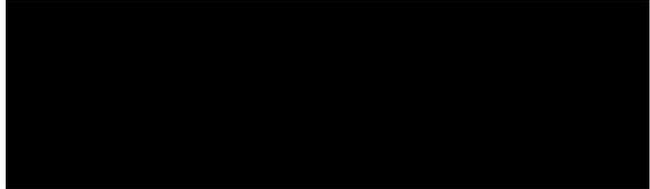
[Handwritten signature]

FILE: LIN 02 193 54458 Office: NEBRASKA SERVICE CENTER Date: JUL 20 2004

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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 operates an automobile repair shop and seeks to employ the beneficiary as an electronic test engineer. 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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)(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:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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 are 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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

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

The petitioner is seeking the beneficiary's services as an electronic test engineer. Evidence of the beneficiary's duties includes the I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to evidence, the beneficiary would: conduct experiments and tests on existing designs and equipment to obtain data on the function and performance of equipment; modify existing circuits which efficiently meet product specifications and customer needs; design components and systems to provide maximum customer value and vehicle function, including improved economy and safety of operation, control of emissions, and operational performance, at optimum costs; direct testing activities on components and equipment under designated conditions to ensure operational performance meets design specifications; and alter or modify design to obtain specified functional and operational performance. The petitioner requires a minimum of a bachelor's degree in electrical or mechanical engineering for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a brief stating that the proffered position qualifies as a specialty occupation and meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are submitted in such vague and generic terms, however, that it is difficult to ascertain precisely what tasks the beneficiary would perform on a daily basis. The petitioner contends that the duties of the offered position are those of an electrical or electronics engineer. Electrical and electronics engineers specialize in different areas such as power generation, transmission, and distribution; communications; and electrical equipment manufacturing, or a subdivision thereof. They design new products, write performance requirements, develop maintenance schedules, test equipment, solve problems, and estimate the time and cost of engineering projects. The petitioner operates an automobile repair shop and has provided absolutely no evidence to establish that it is engaged in any of the aforementioned areas of specialization that normally employ engineers. The petitioner must do more than simply quote job responsibilities normally assigned to an engineer and state that it wishes to employ an individual to perform those duties. It must establish the nature of its operation and show that it actually requires the services of an engineer in the course and scope of its business. This, the petitioner has failed to do. Given the nature of the petitioner's business, and the record as it now stands, the duties of the proffered position appear to be those noted for automotive service technicians and mechanics in the *Handbook*. To qualify to perform the duties of these positions, applicants may learn the profession solely by assisting and learning from experienced workers. Increasingly, however, persons seeking these positions complete more formalized training in high school, or post secondary vocational schools. A minimum of a bachelor's degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry into this position. The petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this proposition the petitioner submitted numerous job advertisements for engineering positions. The advertisements, however, are of little evidentiary value as the duties described for the proffered position are not similar to those noted for the positions advertised. Furthermore, none of the organizations advertising for engineering positions are remotely similar to that of the petitioner, nor is the type of work that they perform similar to that performed by the petitioner in its automobile repair business.

Counsel states in its response to the director's request for evidence that the petitioner "has not previously hired anyone for the same position who was not a professional and did not possess the required professional credentials." It is presumed that this statement is intended to establish that the petitioner normally requires a degree in a specific specialty or its equivalent for the proffered position. Neither counsel nor the petitioner, however, offered any evidence in support of this proposition. A party must do more than simply make an assertion on the record without supporting documentation in order to meet the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO does not agree with the petitioner's assertion that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties, though vague in description, appear to be duties routinely performed by automotive service technicians or mechanics in the

industry. Knowledge required to perform those duties is not usually associated with the attainment of at least a baccalaureate education. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the proffered position satisfies any of the above listed regulatory criteria. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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