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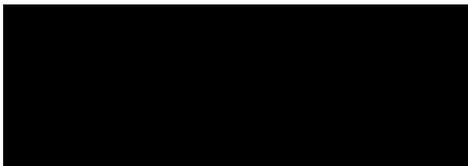
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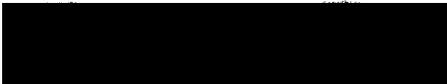
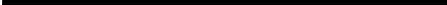
U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



**U.S. Citizenship  
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Services**

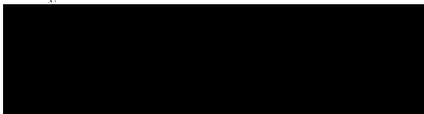


FILE: WAC 02 191 53578 Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2004**

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)

ON BEHALF OF PETITIONER:



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, 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 is a custom car fabrication company that seeks to employ the beneficiary as a custom car assembler. The petitioner, therefore, 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, counsel asserts that the petitioner's business is very unique, and, as such, the offered job is a specialty occupation. Counsel submits further documentation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

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 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 August 15, 2002 letter that responds to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a custom car assembler. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's August 15,

2002 letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail fabricating and assembling custom and high performance cars according to customers' designs and layouts. The petitioner indicated that there is no institution of higher education that grants a baccalaureate degree in custom car fabrication.

The director found that the proffered position was not a specialty occupation and referred to the description of automotive body and related repairers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. The director noted that this classification did not require a baccalaureate degree in a specific specialty for entry into the position. The director further determined that the evidence submitted by the petitioner was not persuasive that an experienced individual with less than a baccalaureate degree could not perform the duties of the job.

On appeal, counsel asserts that the director failed to analyze the job duties of the position, which would distinguish the job from the work performed by a normal body repair shop. Counsel states that the petitioner's business is not a body shop, but rather a custom and/or performance car fabricator. As such counsel asserts that the position requires specialized knowledge in all aspects of car fabrication.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* has no specific classification for custom car assemblers. Nevertheless the duties of the proffered position appear to be analogous to parts of several classifications examined in the *Handbook*, such as painting and coating workers, except construction and maintenance on page 556; automotive mechanics on page 487; engine assemblers on page 514; and machinists on page 521, and metal workers and plastic workers on page 519. According to the *Handbook*, none of these classifications require a baccalaureate degree in a specific specialty for entry into the respective positions. For example, employers appear to hire persons in fields such as metalworking who have completed formal training programs from apprenticeship programs, informally on the job, and in secondary, vocational, or postsecondary schools. Thus the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation for academic credentials required of other custom car assemblers in similar facilities. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In its response to the director’s request for further evidence, the petitioner identified three former employees; however, it provided no information on the academic credentials, job titles or any proof of employment for these former employees. In addition, the petitioner also described its two employees as master artisans, one being a master metal craftsman and the other employee, a master painter. The petitioner provided no further documentation as to the academic credentials, job titles or proof of employment for these two current employees. Without more persuasive evidence, the petitioner has not established that it requires individuals hired as custom car assemblers to possess a bachelor’s degree in a specific specialty.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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. In the response to the director’s request for further evidence, counsel provided a list of seventeen activities undertaken in the assembly of a custom car. The list ranged from the design of pneumatics and hydraulics systems to work activities, such as soldering, auto painting, roll bar building, auto body making, and welding iron. None of these duties appear to be so specialized or complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director’s denial of the petition.

Beyond the decision of the director, the beneficiary is not qualified to perform the duties of the proffered position, if the position has been found to be a specialty occupation. The beneficiary attended a technical institute in Hungary for three years. The coursework for this institute is listed as the body iron profession. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any field of study. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C). In the alternative, the petitioner has not provided sufficient documentation to establish the equivalency of the beneficiary’s educational credentials and work experience to a United States baccalaureate or higher degree. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss this issue further.

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. The petition is denied.