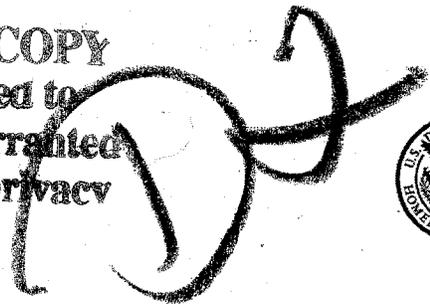


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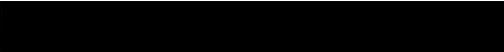
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: WAC 03 051 53703 Office: CALIFORNIA SERVICE CENTER Date: **MAY 03 2004**

IN RE: Petitioner 
Beneficiary 

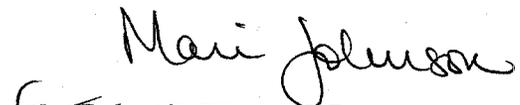
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF APPLICANT:



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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. Based upon review of the information that the petitioner had provided in support of the petition, the director determined that the beneficiary was not eligible for the benefit sought. The director, therefore, properly served the petitioner with a notice of his intent to revoke the approval of the petition. The director ultimately revoked the approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation engaged in the business of transmission design and repair. In order to continue to employ the beneficiary as an automotive engineer, the petitioner endeavors to continue the beneficiary's classification as a nonimmigrant worker in that 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).

Revocation of an approved nonimmigrant visa petition is governed by the regulation at 8 C.F.R. § 214.2(h)(11), which, in pertinent parts, provides that the director may revoke approval of a petition on certain specified grounds, after giving the petitioner notice of the grounds of the intended revocation and 30 days to respond with whatever rebuttal evidence the petitioner may wish to submit.

On October 8, 2003, the director issued a notice of intent to revoke approval of the petition on the basis of the criterion at 8 C.F.R. § 214.2(h)(11)(iii)(5), that is, because "approval of the petition violated 8 C.F.R. § 214.2(h) [that is, the Citizenship and Immigration Services (CIS) regulations on temporary employees at 8 C.F.R. § 214.2(h)] and/or involved gross error." The director's notice questioned whether the evidence substantiated that (1) the proffered position is an automotive-engineer specialty occupation, and (2) the beneficiary has the necessary qualifications to serve in the proffered position. The notice also stated that the petitioner would have to produce quarterly wage reports and copies of income tax and W-2 and W-3 documents pertaining to the beneficiary, in order to establish a proper employer-employee relationship between the petitioner and the beneficiary. (This last issue was apparently resolved to the director's satisfaction, as the employer-employee relationship was not identified as a ground for revocation in the director's decision to revoke approval of the petition.)

On November 7, 2003, the petitioner filed its response to the director's notice of intent to revoke, which consisted of a letter of response from the petitioner's controller and exhibits in the form of letters, Internet documents, resume information from the professors who were among those submitting letters, photographs, a diagram, a schematic drawing, and tax and wage documents pertaining to the petitioner.

On December 30, 2003, the director issued his decision to revoke approval of the petition on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

In urging that approval of the petition should not have been revoked, counsel files a brief and additional documentation, including Internet information about the Society of Automotive Engineers (SAE); a copy of the beneficiary's SAE membership card; sections on the automotive and mechanical engineer occupations, from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*; a letter from the petitioner's president; a letter from the beneficiary's previous employer, Rane TRW Steering Systems Limited (TRW Steering Systems), which expands on the information provided in a letter submitted earlier in

the proceeding; and a copy of a diploma reflecting the petitioner's completion of a course of instruction in automobile engineering in April 1989.

In reaching its determination on the appeal, the AAO considered the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and supporting documentation; (2) the documentation regarding the approval of the petition; (3) the director's notification of his intent to revoke approval of the petition; (4) the materials which the petitioner filed in response to the director's notification of his intent to revoke the approval; (5) the director's letter revoking approval of the petition; and (5) the Form I-290B, and counsel's brief and the documents submitted with it.

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.

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.

Upon consideration of the totality of the record, the AAO has determined that the proffered position normally requires at least a bachelor's degree in engineering or a related field, and that the position therefore qualifies as a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal, the petitioner submitted an evaluation letter from Professor [REDACTED] Associate Professor of Mechanical Engineering at Ohio State University; a letter from an engineer who is the Technical Instructor at Jasper Engines and Transmissions; Jasper Engines Internet information distinguishing remanufacturing from rebuilding; a letter co-signed by the owner and the technical director of Freeway Transmissions, Inc; and a

letter from Professor [REDACTED] the Director of Engineering Outreach and Internships at San Diego State University.

In the context of all the evidence of record in this proceeding, the cumulative weight of the above-listed statements was decisive, by virtue of the expertise of the writers on the matters upon which they opined and the factual bases which they presented for their conclusions.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, the AAO considered the evidence of record in light of occupational information provided in the 2004-2005 edition of the *Handbook*. The *Handbook* indicates that transmission technicians and rebuilders require extensive knowledge in the area of diagnosis of electrical and hydraulic problems. However, the *Handbook* does not specifically address the transmission remanufacturing process, nor does it indicate that the knowledge of transmission technicians precludes the requirement for a degreed engineer or engineer technologist in the business context described by the petitioner.

In the absence of *Handbook* information specifically focused on automotive engineering, the *DOT* section on the automotive engineer occupation is especially relevant, as it indicates that automotive engineers may work in conceptual and design areas of automotive transmissions such as those outlined for the beneficiary in the letters of the petitioner and those submitting opinions on the petitioner's behalf. The AAO has italicized the relevant parts of the narrative:

007.061-010 AUTOMOTIVE ENGINEER (auto. mfg.)

Develops improved or new designs for automotive structural members, engines, transmissions, and associated automotive equipment or modifies existing equipment on production vehicles, and directs building, modification, and testing of vehicle, using computerized work aids: Conducts experiments and tests on existing designs and equipment to obtain data on function of and performance of equipment. Analyzes data to develop new designs for motors, chassis, and other related mechanical, hydraulic, and electromechanical components and systems in automotive equipment. Designs 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. Directs and coordinates building, or modification of, automotive equipment or vehicle to ensure conformance with engineering design. Directs testing activities on components and equipment under designated conditions to ensure operational performance meets design specifications. Alters or modifies design to obtain specified functional and operational performance. May assist DRAFTER, AUTOMOTIVE DESIGN (auto. mfg.) 017.261-042 in developing structural design for auto body. May conduct research studies to develop new concepts in automotive engineering field.

Upon consideration of the totality of the record, the AAO has also determined that the beneficiary is qualified for the proffered specialty occupation position in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (h)(4)(iii)(D)(I). The evidence is sufficient to establish that (1) by a combination of formal education, training, and experience, the beneficiary has attained the equivalent of a U.S. baccalaureate degree in engineering

technology, and (2) that this is a degree required by the specialty occupation. Accordingly, the petitioner has overcome this additional ground of revocation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

As the director correctly determined, the petitioner must demonstrate that the beneficiary meets the criterion at section 4, because the evidence of record is not relevant to the other three sections.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

Section 2 is not a factor in this proceeding, because there is no evidence of college-level equivalency examinations or special credit programs.

The petitioner submitted evidence from a Professor [REDACTED] who stated that he was acting as "as a consultant for ICETS," International Credentials Evaluation and Translation Services, which is a foreign-education evaluation service. Accordingly, the AAO applied section 3 in its consideration of this evaluation. However, the AAO discounted this evaluation's conclusion about U.S. degree-equivalency because the evaluation was based, in part, on work experience. By its express terms, section 3 only provides for evaluations of education, not education and work experience. As Professor Edelson claims no authority to grant college-credit, his opinion is not appropriate for analysis under section 1.

The AAO also discounted the beneficiary's SAE membership as evidence of certification or registration in the type of nationally-recognized professional association or society referenced at section 4. The evidence in the record, including the information from the SAE Internet site, does not establish that SAE grants full member status only to those who have achieved a certain level of competence in automotive engineering.

However, the AAO has determined that Professor [REDACTED] evaluation of the beneficiary's foreign education and work experience has established that the beneficiary is qualified to serve in the proffered automotive engineer specialty occupation, by application of the criterion at section 1.

On the basis of the beneficiary's work experience, training, and formal education, Professor [REDACTED] evaluation concludes that (1) the beneficiary has attained the equivalent of a U.S. baccalaureate degree in engineering technology, and (2) this degree qualifies as within the range of the automotive engineering or related degrees that the earlier part of the opinion found to be required by the proffered position.

The AAO accepted the letter from the Chair of the Mechanical Engineering Department of Ohio State University as sufficient evidence that Professor [REDACTED] qualifies under section 1 as "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience."

Because of the engineering expertise reflected in his resume, the AAO accorded great weight to Professor [REDACTED] opinion on the specialty occupation issue and upon the issues of the beneficiary's credentials and their sufficiency for the automotive engineering type of occupation that the professor discerned in the proffered position.

The AAO also determined that the record provided sufficient documentary evidence for Professor [REDACTED] to reach his conclusions, including the determination that the beneficiary achieved “the equivalent of a Bachelor of Science Degree in Engineering Technology from an accredited institution of higher learning in the United States” by a combination of education (evidenced by the grade transcript and diploma in automotive engineering from the Tamil Nadu State Board of Technical Engineering and Training), training (evidenced by a certificate of proficiency issued by the Board of Apprenticeship Training after one year of apprenticeship in automotive engineering for the Pallavan Transport Corporation), and approximately eight and one-half years work experience in the area of design and development of power steering (as evidenced by the October 31, 2003 letter from TRW Steering Systems).

The director’s concerns were well-articulated; however, the totality of the evidence weighs in favor of the petitioner. The petitioner has clarified and overcome the director’s reasons for denial, and the petitioner has established that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.