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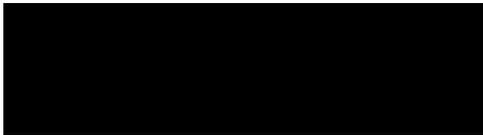


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MAY 06 2004

FILE: LIN 02 286 50517 Office: NEBRASKA SERVICE CENTER Date:

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.

Marif 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 is a not-for-profit company that provides educational and employability development for developmentally disabled persons. It wishes to employ the beneficiary as the manager of its vehicle maintenance services division. 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 director ignored documentation previously submitted by the petitioner. Citizenship and Immigration Services (CIS) notes that, although counsel indicated that additional evidence would be submitted to the AAO within 30 days of filing the appeal, as of this date, the record does not contain any additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision based upon the evidence before it at the present time.

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 petitioner's letter of support dated August 7, 2002; (3) the director's request for additional evidence; (4)

counsel's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 manager of its vehicle maintenance services division. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary's duties entail: managing the operation of the vehicle maintenance division services at the Ft. Lewis U.S. Army base and insuring profitability and efficiency goals; developing yearly budget requirements; developing all maintenance and technology processes for vehicle quality program; establishing training processes; managing the progression of automobile technicians from apprentice through journeymen levels; managing a technical and administrative staff of over 300 employees; problem-solving U.S. Army technical and engineering issues as they relate to wheeled and tracked vehicles; and writing maintenance policy and operations procedures based on maintenance requirements and the latest technology.

In the petitioner's response to the director's request for further evidence, the petitioner provided the following percentage breakdown of the beneficiary's duties: management of the operations of the vehicle maintenance services division-60 per cent; development of maintenance and technology processes-10 per cent; establishment of training processes-5 per cent; management of the progression of automobile technicians from apprentice through journeyman levels-5 per cent; direction of maintenance processes based on latest technical guidance from manufacturers-5 per cent; management of performance evaluations, and the hiring, and terminating of employees-5 per cent; problem solving army technical and engineering issues-5 per cent; and writing of maintenance policy and operational procedures-5 per cent. The petitioner stated that the position required a baccalaureate degree in automobile technology or its equivalent in academic schooling, training and experience. In addition, the petitioner stated that the position required prior experience in the management of the maintenance of tracked and wheeled U.S. military vehicles and in the management of U.S. Army vehicle contracts.

The director found that the proffered position was not a specialty occupation and referred to the description of industrial manufacturing manager in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Based on this document, the director stated that a baccalaureate in a specific specialty was not required for the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director ignores the documentation submitted with regard to the beneficiary's qualifications, as well as a letter from a professor at Olympic College, in Bremerton, Washington, that addressed the complex nature of the job as well as the beneficiary's education. In addition, counsel states that the director did not give proper weight to the job advertisements submitted to the record.

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. With regard to the duties of the proffered position, it appears to be an amalgam position combining operations management skills with knowledge and experience in automotive technology and U.S. Army vehicle maintenance contracts. The *Handbook* does not indicate that managerial positions require baccalaureate degrees in a specific specialty for entry into such positions. For example, the *Handbook* indicates that the academic credentials of operations managers, as described in the *Handbook's* section on executives, vary as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts. With regard to experienced automotive technicians, the *Handbook* classification of automotive technicians provides some guidance as to necessary academic credentials. The 2004-2005 edition of the *Handbook* states:

Automotive technology is rapidly increasing in sophistication, and 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. . . . Many high schools, community colleges, and public and private vocational and technical schools offer automotive service technician training programs. The traditional postsecondary programs usually provide a thorough career preparation that expands upon the student's high school repair experience.

Thus, the *Handbook* does not indicate that the acquisition of automotive technology expertise requires a baccalaureate degree in a specific specialty. Without more persuasive evidence, the petitioner has not established that the proffered position, in fact, is a specialty occupation.

Regarding parallel positions in the petitioner's industry, the petitioner submitted three job advertisements for positions described as automotive maintenance manager, automotive operations manager and automotive quality manager. Although all three job vacancy notices indicated that a baccalaureate degree was required for the positions, none of the three positions required a baccalaureate degree in a specific specialty. As previously noted, 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.

In addition, the petitioner also provided a letter from Professor Cynthia Azari, Vice President of Instruction, Olympic College, Bremerton, Washington. In her letter, Professor Azari stated that she conducted a search of advertised positions similar to the proffered position from companies such as Waste Management, Pro Connections, Cintas and United Parcel Service, and based on her survey, she stated that positions requiring the skills for such jobs normally required a minimum of a bachelor's degree in automotive technology or business management. Professor Azari provided no job announcements that described the actual academic requirements for such positions. Professor Azari's assertions with regard to the academic requirements for such positions are not sufficient to establish an industry-wide standard for entry into the proffered positions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner provided a letter from William Hyatt, who has held positions in U.S. Army vehicle maintenance programs, and who had previously supervised the beneficiary and his subordinates. Mr. Hyatt stated that the proffered position

had major responsibilities and in most organizations required a college degree and ten years of experience. This statement, without any corroborative documentation, is also not sufficient to substantiate the writer's assertions

Finally, the petitioner submitted a letter from Professor Stephen Quinn, Professor of Automotive technology, Continuing Education Coordinator, Olympic College, Bremerton, Washington. Professor Quinn stated that his job involved responsibility for skills evaluation, job placement, and curriculum development in a associate's degree program. Professor Quinn also stated that specific critical duties in the proffered position exceeded the skills expected at the associate degree, and identified these critical duties as communication, management, analysis and systems integration. Professor Quinn then surveyed the bachelor's degree programs in automotive technology at three U.S. colleges and noted their emphasis on developing managers. Professor Quinn noted that baccalaureate degrees in automotive studies are scarce, and then stated that a baccalaureate in business with extensive and responsible experience in the industry would be appropriate academic training. While Professor Quinn is clearly a recognized authority in his field, his statement nevertheless does not establish that a baccalaureate degree in automotive technology is an industry standard for positions similar to the proffered position. In fact, based on the scarcity of persons holding such baccalaureate degrees, it would appear that more managerial positions in the vehicle maintenance services field are more likely to be held by individuals with extensive experience and/or technical, vocational, and post secondary education, than by individuals who possess baccalaureate degrees. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. 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. The petitioner submitted no further documentation on any of its current or previous managers of its vehicle maintenance services division. Therefore the petitioner has not met this criterion.

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. The duties as described by the petitioner, involve considerable responsibility for personnel and budget functions that are routine duties for managers in many businesses. The duties also involve extensive knowledge of the operation and maintenance of specific wheeled and tracked vehicles. Nevertheless, to the extent that they are depicted in the record, the duties do not appear so specialized and 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 petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position, if the position had been determined to be a specialty occupation. The petitioner submitted a combined educational and work experience equivalency document from the Foundation for International Services, Inc., that stated the beneficiary's foreign education was the equivalent of three years of studies in an accredited U.S. educational institution. Thus, the beneficiary does not possess a foreign baccalaureate degree in automotive technology that has been determined to be the equivalent of a U.S. baccalaureate in the same or related field. Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), the petitioner can submit 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. The present educational and work experience equivalency evaluation written by Megan A. Mittelstaedt is not sufficient to establish this criterion. The record is devoid of any information that Ms. Mittelstaedt is affiliated with a university that has a program to grant college credit for work experience, and that this same university presently gives her the authority to grant such credit. The petitioner also has not provided sufficient documentation to satisfy the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications 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.