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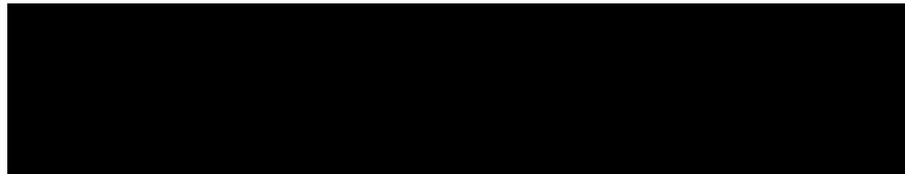
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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Room A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D2



NOV 30 2004

FILE: WAC 04 007 51489

Office: CALIFORNIA 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:

SELF-REPRESENTED

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 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 the owner of an automotive repair company that rebuilds engine transmissions. He seeks to employ the beneficiary as a mechanic specializing in rebuilding vehicle transmissions. 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 and because the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner states that the proffered position qualifies as a specialty occupation based upon the job's complexity. He submits no additional evidence.

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.

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) Form I-290B and memorandum. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an automobile mechanic who specializes in rebuilding vehicle transmissions. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail diagnosing the problem, disassembling and rebuilding a vehicle's transmission by replacing worn or broken parts. The petitioner does not explicitly state that a candidate must have a bachelor's degree in transmission repair or a related specialty to perform the job; however, it may reasonably be inferred that he believes the proffered position is of sufficient complexity that it meets the requirements of the fourth criterion listed above of having duties so specialized and complex that it takes knowledge usually associated with the attainment of a baccalaureate or higher degree. The petitioner states that the beneficiary "earned a degree in about 1984" while providing only an untranslated certificate from the Instituto Teorico Practico de Mecanica Diesel issued in 1981.

The director determined that the proffered position was not a specialty occupation under any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director found that under the first criterion, insufficient evidence existed that the position required a baccalaureate degree or higher related to the petitioner's business; nor, under the second criterion, that a degree was common to the industry in parallel positions among similar organizations or that the position could only be performed by someone with a degree due to its complexity or uniqueness; nor, under the third criterion, that the petitioner normally required a degree or its equivalent for the position; nor, finally, that the nature of the duties were so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Referring to the occupations of automotive service technicians and mechanics in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) 2002-2003, the director stated that the *Handbook* reported that there is no specific bachelor's degree requirement for these positions, and that their duties are similar to those of the proffered position. Instead, he stated that the *Handbook* suggested that persons seeking jobs in these occupations complete a formal training program in high school or post-secondary vocational school, with some apprenticeship under experienced workers. Finally, the director mentioned that the petitioner did not "elaborate on any duty of the beneficiary that might be considered to require a specific academic background."

On appeal, the petitioner stressed the difficulty of finding new graduates from technology programs with the required training that emphasizes the real-life technical difficulties inherent in installing rebuilt transmissions into vehicles. He also stated that too many candidates have lives lacking in stability or are unwilling to relocate permanently to Yuma, Arizona. The petitioner did not demonstrate how the difficulties in finding good candidates for the proffered position related to the above-mentioned criteria for specialty occupations.

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 first considers 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position resemble those performed by automotive service technicians and mechanics. The *Handbook* mentions that such workers do need technical skills and must increasingly understand computerized systems found in today's sophisticated motor vehicles. However, the *Handbook* also stresses that "most new repairers receive primarily on-the-job training, supplemented, when available, with short-term training sessions given by vehicle, parts and equipment manufacturers." *Id.* at 536. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A) given that the *Handbook* states that employers accept candidates with a minimum of training from auto mechanics programs offered by most high schools or post-secondary vocational schools.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner offers no letters from other companies or job postings. Again, referring to the *Handbook*, such a requirement does not appear to be common to the industry. Consequently, the petitioner's evidence is insufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that only an individual with a degree can perform it. Nor has the petitioner established that the duties of the proffered position are so complex or unique that only an individual can perform them who has a degree in a specific specialty. Nor has it been established that the duties 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. The duties are highly technical and performed by skilled technicians who perform complicated mechanical repairs on motor vehicles. The duties, performed, however, are routinely performed in the industry by skilled mechanics and technicians with less than a baccalaureate-level education. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Nor is there sufficient evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a bachelor's degree or its equivalent for the position. The petitioner does not mention that it normally observes this requirement and thereby fails to establish that he normally requires a specific baccalaureate degree for the proffered position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), as stated, requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As already discussed, the *Handbook* reports that employers do not require a baccalaureate degree for a position as an automobile service technician or mechanic. Therefore, the petitioner fails to satisfy the fourth criterion at 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.

The director also found that the petitioner was not qualified to perform the duties of a specialty occupation. The petitioner did not submit evidence that the beneficiary obtained the equivalent of a baccalaureate degree in a relevant specialty. The AAO agrees with the director that the beneficiary is not qualified. As discussed above, however, the beneficiary's credentials are not relevant, as the proffered position does not require a baccalaureate degree, or its equivalent, in a specific specialty.

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.