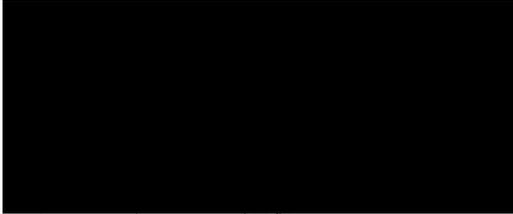




U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 206 53264 Office: VERMONT SERVICE CENTER Date: SEP 02 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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 an automobile services and repair business that seeks to employ the beneficiary as a quality control specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 submits a brief.

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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a quality control specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 17, 2002 letter in support of the petition;

and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: monitoring progress of the petitioner's operations to ensure that contractual standards are met and maintained; assisting in directing activities to ensure that work activities conform to contractual specifications and client requirements; selecting vehicles for quality tests; recording and evaluating test data; recommending modifications to existing standards; preparing progress reports for management; and devising methods to assess cost and responsibility in quality failures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in automotive, mechanical, or industrial engineering, or an equivalent thereof.

The director found that the proffered position, which is similar to an automotive mechanic and service technician, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, in part, that the proffered position, which is that of a quality control specialist, requires a baccalaureate or higher degree. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7 and the General Education Development (GED) levels of R5, M5, and L4, which according to counsel, require a degree to enter into the position. Counsel also states that the record contains an expert opinion and job postings in support of her claim that the proffered position is a professional occupation requiring college-level training in a specific specialty.

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 AAO does not concur with counsel that the proffered position is primarily that of a quality control specialist. A review of the *Handbook*, 2004-2005 edition, finds that quality-control inspectors (Inspectors, Testers, Sorters, Samplers, and Weighers) primarily work in manufacturing establishments. The petitioner, however, is not engaged in manufacturing; it is a full-service automotive repair business. Furthermore, a review of the document entitled "Typical workday for Cyrus S. Gotladera" finds that the proposed duties include removing units such as engines and transmissions, disassembling units, and overhauling and replacing carburetors, blowers, generators, and so forth. This information does not support counsel's statement on appeal: "The worker is not expected to repair or service clients' vehicles. Instead, he is expected to determine whether the company's standards have been met by mechanics and technicians of the company." The record contains no explanation for this inconsistency. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

A review of the Automobile Service Technicians and Mechanics job descriptions in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties primarily parallel those responsibilities of an automobile mechanic or technician, with some additional oversight duties. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an automobile mechanic or technician job.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating and GED levels do not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. The SVP rating and GED levels are meant to indicate only the total number of years of vocational preparation required for a particular position. They do not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

The record contains an opinion from [REDACTED] from the University of Tennessee's College of Engineering, who asserts that positions such as the proffered position require at least a baccalaureate degree in mechanical engineering or a related area. Professor Badiru, however, does not provide any evidence in support of his assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also contains letters from the following: an "automobile enthusiast" with experience in maintaining and servicing vehicles; an automotive mechanic; an automotive repair shop manager; and a Ford dealer employee (title not specified). All assert that positions such as the proffered position require a baccalaureate degree in mechanical, industrial, or automotive engineering, or a related discipline. Again, the writers do not provide any evidence in support of their assertions. 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*. Furthermore, much of the text of the letters is identical. Thus, the AAO must question whether the opinions expressed in each letter are the views of each author.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for quality control positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for quality control positions in the manufacturing and information technology industries. In addition to the proffered position not being similar to the positions described in the advertisements, the petitioner's industry is not in manufacturing or information technology. Thus, the advertisements have little relevance.

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, therefore, has 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. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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.

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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 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.