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U.S. Citizenship
and Immigration
Services



FILE: WAC 03 133 54231 Office: CALIFORNIA SERVICE CENTER Date: **SEP 30 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:



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 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 dealership, and seeks to employ the beneficiary as a master automotive mechanic/training manager. The petitioner 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 states that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a master automotive mechanic/training manager. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to the I-129 petition, the beneficiary would: provide technical training to technicians for all phases of repairs, troubleshooting, and factory campaigns of service actions; ensure quality of repairs from all technicians is carried out to manufacturer's standards; review all assignments prior to inspection or commencement of job and provide details and instructions to make needed diagnoses or repairs; assist each technician when unable to accurately diagnose problems or make actual needed repairs; ensure actual or recommended repair is being performed correctly; ensure recommendation is actually needed and not excessive or fictional; ensure recommendation sheets are filled out properly and estimates for parts and time requirements are accurate; liaison with Bentley U.K. filing product defect reports; and maintain in-depth communication with the service manager regarding overall activities of the shop and repair and service recommendations for clients. The petitioner requires a minimum of a bachelor's degree in automotive engineering or a closely related discipline for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the offered position meets the requirements of the above cited regulatory criteria. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for automotive service technicians and mechanics, with additional training responsibilities. 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 a postsecondary vocational school. Some service technicians still learn the trade, however, by assisting and

learning from experienced workers. Training programs are offered by many high schools, community colleges, and public and private vocational technical schools. Some trade and technical school programs provide concentrated training for six months to a year. Community college programs normally spread the training over two years, and supplement the training with regular university course offerings. Mechanics and service technicians may also receive various forms of certification by meeting the criteria of the certifying agency. It is clear, however, that a minimum of a bachelor's degree, or its equivalent, in a specific specialty is not normally the minimum requirement for entry into the position and the petitioner has failed to satisfy the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner contends that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion, the petitioner submitted a single job advertisement from the County of San Diego, CA for a master fleet technician. First, a single advertisement is insufficient in scope to establish an industry educational standard for the proffered position. Second, the advertisement clearly indicates that a degree requirement is not a minimum requirement for entry into the position. The advertisement states that an individual may qualify for the position with: (1) possession of a high school diploma, GED, and seven years of experience; or (2) two years experience as an equipment mechanic and/or senior fleet technician for the County of San Diego; or (3) a certificate of completion or degree from an accredited college in automotive technology or truck technology and five years of related experience. **Individuals** may clearly qualify for the advertised position with less than a baccalaureate level education. **The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).**

The petitioner does not assert that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. Nor has it been established 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 expensive 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).

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.