

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

D2



FILE:



Office:

VERMONT SERVICE CENTER



Date: MAY 24 2005

IN RE:

Petitioner:

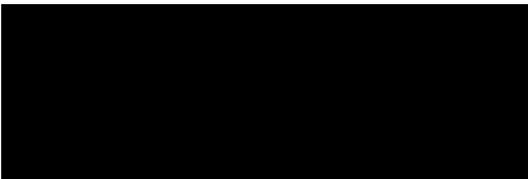


Beneficiary:

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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a distributor of systems and equipment for the automotive industry. It seeks to employ the beneficiary as an operations or technical service manager and to classify him 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 on the grounds that the proffered position did not qualify as a specialty occupation and the beneficiary was not qualified to perform the services of 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.

As provided in 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 thereto; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as an importer and distributor of automotive systems and parts to gasoline stations, car washes, tire shops, body shops, and lubrication services in Puerto Rico. The petitioner stated that it had 24 employees, gross annual income (in 2002) of \$2.6 million, and proposed to employ the beneficiary as an operations or technical service manager (the titles are used interchangeably by the petitioner) to “manage daily operations” and ensure “the proper installation, service, and use of the systems we distribute.” In response to the RFE the petitioner further explained that its technical service manager would manage and coordinate the company’s technical operations and the work of its technical staff, consisting of seven technicians and two assistant technicians. According to the petitioner the proffered position required a bachelor’s degree in business administration or a combination of education and work experience equivalent thereto. The petitioner asserted that the beneficiary had the equivalent of a bachelor’s degree in business administration by virtue of his 23 years of work experience as a technical manager in various Ecuadorean companies and three years of academic studies at the University of Guayaquil, in Ecuador.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). Though the petitioner asserted that the proffered position fit the description of an operations manager in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, the director determined that the record failed to establish that the beneficiary would actually be performing the duties of an operations manager. The petitioner failed to show how a bachelor’s degree in business administration directly related to the proffered position, the director declared, or how such a degree was essential to the performance of the job duties. While acknowledging that a baccalaureate degree or its equivalent is often needed by a “general/operations manager,” the director noted that a supervisor of mechanics, repairers, or technicians, as described in the DOL *Handbook*, does not require such a degree.

On appeal counsel asserts that the petitioner’s need for a technical service manager is real and substantial because of the company’s rapid growth resulting in large part from a recently renewed service contract with Texaco Puerto Rico. In an accompanying letter the petitioner explains that the technical service manager will be managing a staff of seven staff technicians, one staff assistant technician, and 8-10 subcontracted technicians and mechanics – numbers which the petitioner claims will continue to grow – in addition to a small administrative staff. The petitioner lists the duties of the proffered position, and the percentage of the beneficiary’s time required by each duty, as follows:

- Calculate cost of liquid delivery lines or pumps, and cost of labor needed to install or otherwise service same – 8%.
- Forecast labor hours, manpower needs, materials needs, and costs for ongoing and new servicing business – 12%.
- Calculate profitability of upcoming/ongoing servicing business for existing customer installations, for monthly, quarterly and annual profitability reviews – 16%.
- Analyze profitability based on expenditures and receipts on completed projects – 20%.
- Forecast return on investment on upcoming servicing projects, including timing of when, and rate at which, projects become profitable – 12%
- Propose to top management staff growth needs – 5%.
- Interview, hire and fire technical staff and locate, evaluate and engage subcontractor labor – 5%.

- Establish and implement staff procedures for scheduling servicing work to be performed by staff and subcontractor technicians – 7%.
- Quality control: monitor staff and subcontractor service performance; communicate with customer installations – 10%.
- Monitor staff complaints with an eye to maintaining staff morale – 5%.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti Inc. v. Reno, id.*, at 1165-66.

The proffered position as described by the petitioner in its initial letter to the service center and in its response to the RFE – *i.e.*, manager of a staff of technicians with responsibility for ensuring the proper installation, service, and use of the parts and systems sold to gasoline stations, car washes, tire shops, body shops, and lubrication services – fits the *Handbook's* description of a first-line supervisor/manager of mechanics, installers, and repairers. See *Handbook*, 2004-05 edition, at page 657. According to the *Handbook*, the most significant source of education or training for such a position – which accords with the beneficiary's qualifications in the instant petition – is work experience in a related occupation. See *id.* Thus, a baccalaureate degree in a specific specialty is not the normal minimum requirement to become a first-line supervisor of mechanics, installers, and repairers, as required for the position to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal counsel renews an earlier contention that the proffered position should be classified as an operations manager, as described in the *Handbook*. General managers and operations managers are included in the *Handbook's* occupational category entitled "top executives," and their duties are described as follows:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

Handbook, 2004-05 edition, at page 65. The AAO determines that the duties of the proffered position, as detailed by the petitioner in the appeal, accord with the *Handbook's* broad description of an operations manager. The *Handbook* goes on to describe the educational background and experience of top executives, including general and operations managers:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

Handbook, id., at 66. While the foregoing excerpt indicates that some operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such a position, as required for the position at issue in this petition to meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Whether classified as a first-line supervisor of mechanics, installers, and repairers or as an operations manager, therefore, the proffered position does not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, or that its complexity exceeds that of other operations or technical service managers in the petitioner's industry, such that a degree in a specific specialty would be required. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires its operations or technical service manager to have a bachelor's degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. As far as the record shows, neither the duties of the position nor the particular circumstances of the petitioner's business distinguish the proffered position in any significant way from that of any other operations or technical service manager in the industry, for whom knowledge associated with a degree in a specific specialty is not normally required.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will

be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

As previously discussed, the director also determined that the beneficiary is not qualified to perform the services of a specialty occupation. Since the proffered position does not qualify as a specialty occupation, however, the issue of the beneficiary's qualifications is irrelevant to the disposition of this petition.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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