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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC 02 246 51483 OFFICE: VERMONT SERVICE CENTER DATE: JAN 20 2004

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a powersports dealership that currently employs 48 persons and has a gross annual income of $12,000,000. It seeks to employ the beneficiary as a master technician. The director denied the petition because he found that the petitioner had failed to establish (1) that the proffered position qualified as a specialty occupation; and (2) that the beneficiary was qualified to serve in a specialty occupation.

On appeal, counsel submits a brief and additional evidence to contest both grounds of the denial. As the AAO has determined that the evidence of record does not establish that the proffered position is a specialty occupation, this decision will concentrate on the specialty occupation basis for the denial.

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), provides 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 one 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.

The Form I-129 listed the job title as "Master Technician" and, for a nontechnical description of the position, stated,

"Motorcycle Mechanic."

The petitioner's response to the director's request for additional evidence included a job description document which, in part, identified the proffered position as that of a "Foreman/Master Technician" who would report to the Service Director and General Manager. According to the document, the person holding the position would be in charge of quality control and technician performance. The following qualifications were stated:

Advanced Training from Manufacturers -

Advanced Chassis and Suspension
Advanced Engine Service
Advanced Fuel Induction Service
Advanced Electrical Systems

Human Relations Skills
Communication Skills
Organizational Skills

The job description document also provided the following list of "Duties and Responsibilities," with a notation that the asterisked sections "require advanced training":

1. Personnel (5% of daily routine)

- Select technicians and apprentices[.]
- Train technicians and assist them on the job[.]*
- Evaluate technician performance[.]*
- Outline training program for technicians[.]*
- Conduct monthly one-on-one meetings with each technician[.]

2. Quality Control (50% of daily routine)

- Supervise technicians to perform maintenance and repairs in accordance with dealer quality and efficiency standards[.]*
- Ensure that technicians perform each job within proper time limits [.]
- Perform quality control on designated units using standard test procedures[.]*

- Initial each Repair Order (RO) when quality control check (QC) is complete.

- Provide latest technical information; keep technical bulletins and workshop literature updated.

3. . General tasks (45% of daily routine)

- Control special tool and equipment inventory[.]

- Control warranty parts identification, storage and disposal[.]

- Assist in parts match and expedite completion[.]

- Perform maintenance and repairs in accordance with dealer and manufacturer quality and efficiency standards.*

- Perform QCR's (used inventory evaluations - "quality control reports") on units coming in for trade or sale[.]

On appeal, counsel asserts that the proffered position requires, as a minimum, the equivalent of a bachelor's degree. Counsel also maintains that the responsibilities listed on the job description document "alone should be enough to label [the proffered position] as a 'specialty occupation' inasmuch as only someone with extensive training and experience could fill it." Counsel further asserts that the proffered position should be classified as a specialty occupation because it requires "an individual, such as [the beneficiary] who has held progressively more responsible positions in the field."

Also, it appears that counsel maintains that the proffered position is a specialty occupation by virtue of the work experience of the particular person that the petitioner seeks to employ:

> . . . However, even if the gradual increase in level of responsibility would not suffice to measure this position as a "specialty occupation," the petition should be granted based on other factors. For example, according to the relevant regulations, equivalency may also be determined by applying the so-called "three-for-one" rule by which three years of specialized training and/or work experience can be substituted for each year of college-level education that the beneficiary lacks. 8 CFR § 214.2(h)(4)(iii)(D)(5).

In this same regard, counsel notes:

> Here, as stated previously, [the beneficiary] has worked and gained specialized training in the applicable field over the course of some fifteen (15) years. In this case, if one applies the "three-for-one" rule, [the beneficiary] has the equivalent of five (5) years of college-level education. Therefore, the petition should be granted because the position is a "specialty occupation.["]

Finally, counsel states that Citizenship and Immigration Services (CIS) should disregard the petitioner's indication in the petition's paperwork that the proffered position required only a high school diploma. To do otherwise would be "patently unfair," says counsel, because the petitioner did not have counsel at the time and "[t]he H-1B application form does not make it clear to petitioners that information regarding the petitioner's need for extensive experience and specialized training would be pertinent to fully answer that section."

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.

Before discussing the evidence of record, it is worth emphasizing this point which is critical to the AAO's decision in this proceeding: CIS consistently and correctly interprets "degree" in 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. *See* section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(iii)

(A). *See also Tapis International v. INS,* 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

The AAO routinely consults the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* for its authoritative information about particular occupations' duties and educational requirements. Here, the AAO consulted the 2002-2003 edition and found that that the duties of the proffered position substantially comport with those of the small engine mechanic occupation and its motorcycle mechanic subset, which the *Handbook* addresses at pages 496-498. The *Handbook,* at pages 496-497, states, in part:

> Small engines, like large engines, require periodic service to minimize the chance of breakdowns and to keep them operating at peak performance.
>
> During routine equipment maintenance, mechanics follow a checklist including the inspection and cleaning of brakes, electrical systems, fuel injection systems, plugs, carburetors, and other parts. Following inspection, mechanics usually repair or adjust parts that do not work properly, or replace unfixable parts. Routine maintenance is normally a major part of the mechanic's work.
>
> When equipment breakdowns occur, mechanics use various techniques to diagnose the source and extent of the problem. The mark of a skilled mechanic is the ability to diagnose mechanical, fuel, and electrical problems, and to make repairs in a minimal amount of time. Quick and accurate diagnosis requires problem-solving ability and a thorough knowledge of the equipment's operation.
>
> In larger repair shops, mechanics may use special computerized diagnostic testing equipment as a preliminary tool in analyzing equipment. These computers provide a systematic performance report of various components to compare them to normal ratings.
>
> After pinpointing the problem, the mechanic makes the needed adjustments, repairs, or replacements. Some jobs require minor adjustments or the replacement of a single

> item, such as a carburetor or fuel pump. In contrast, a complete engine overhaul requires a number of hours to disassemble the engine and replace worn valves, pistons, bearings, and other internal parts. Some highly skilled mechanics use highly specialized components and the latest computerized equipment to customize and tune motorcycles and motorboats for racing.
>
> Small engine mechanics use common handtools such as wrenches, pliers, and screwdrivers. They also use power tools, such as drills and grinders when customized repairs warrant. Computerized engine analyzers, compression gauges, ammeters and voltmeters, and other testing devices help mechanics locate faulty parts and tune engines. Hoists may be used to lift heavy equipment such as motorcycles, snowmobiles, or motorboats. Mechanics often refer to service manuals for detailed directions and specifications while performing repairs.
>
> *Motorcycle mechanics* repair and overhaul motorcycles, motor scooters, mopeds, dirt bikes, and all-terrain vehicles. Besides engines, they may work on transmissions, brakes, and ignition systems, and make minor body repairs. Mechanics usually specialize in the service and repair of one type of equipment, although they may work on closely related products. Mechanics may only service a few makes and models of motorcycles because usually the dealers only service the products they sell.

Counsel incorrectly contends that "the description of this position alone should be enough to label it a 'specialty occupation' inasmuch as only someone with extensive training and experience could fill it."

The AAO recognizes that the proffered position includes supervisory, quality control, inventory, training and other duties that involve more than direct, hands-on mechanical work. The AAO also has considered counsel's contention that the position requires expertise above that possessed by an entry-level mechanic. However, as the proposed duties rely mainly upon mastery of a body of knowledge - motorcycle mechanics - in which all motorcycle mechanics share, the duties do not elevate the position above the motorcycle mechanics occupation. Accordingly, the *Handbook*, at page 498, indicates that experience and leadership skills can lead to a supervisory position in the field of motorcycle mechanics: "Experienced mechanics with leadership ability may advance to shop supervisor or service manager jobs."

The *Handbook* indicates that motorcycle mechanic positions do not normally require a bachelor's degree or higher, or the equivalent,

in any specific specialty. This is evident in this excerpt from pages 497-498:

> Due to the increasing complexity of motorcycles and motorboats, most employers prefer to hire mechanics who graduate from formal training programs for small engine mechanics. Because the number of these specialized postsecondary programs is limited, most mechanics learn their skills on the job or while working in related occupations. For trainee jobs, employers hire persons with mechanical aptitude who are knowledgeable about the fundamentals of small 2- and 4-stroke engines. Many trainees develop an interest in mechanics and acquire some basic skills through working on automobiles, motorcycles, motorboats, or outdoor power equipment as a hobby. Others may be introduced to mechanics through vocational automotive training in high school, or one of many postsecondary institutions.
>
> Trainees learn routine service tasks under the guidance of experienced mechanics by replacing ignition points and spark plugs or by taking apart, assembling, and testing new equipment. As trainees gain experience and proficiency, they progress to more difficult tasks such as advanced computerized diagnosis and engine overhauls. Up to 3 years of on-the-job training may be necessary before a novice worker becomes competent in all aspects of the repair of motorcycle and motorboat engines.
>
> Employers often send mechanics and trainees to special training courses conducted by motorcycle, motorboat, and outdoor power equipment manufacturers or distributors. These courses, which can last as long as 2 weeks, upgrade the worker's skills and provide information on repairing new models. They are usually a prerequisite for any mechanic who performs warranty work for manufacturers or insurance companies.
>
> Most employers prefer to hire high school graduates for trainee mechanic positions, but will accept applicants with less education if they possess adequate reading, writing, and arithmetic skills. Many equipment dealers employ students part time and during the summer to help assemble new equipment and perform minor repairs. Helpful high school courses include small engine repair, automobile mechanics, science, and business arithmetic.

Counsel is incorrect to the extent that she attempts to use the beneficiary's years of experience to help qualify the proffered position as a specialty occupation. A particular beneficiary's education, training, and experience are relevant only for a determination of his or her qualifications to serve in a specialty

occupation. The nature of the specific duties involved is the decisive factor in determining the specialty occupation status of a proffered position. *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(A) and 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO has noted that documents submitted with the Form I-129 included: (1) pages from DOL's On Line Wage Library, which included, in part, "job zone" training and education information; and (2) a fax page, apparently from the Delaware Department of Labor" that references the proffered position as "zone three." None of this information establishes that the proffered position requires a baccalaureate or higher degree, or the equivalent, in any specific specialty.

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher in a specific specialty, the petitioner has not met the specialty occupation criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h) (4) (iii) (A) (2).

A. Degree requirement common to the industry.

Factors often considered by CIS when determining the industry standard 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. *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)).

No evidence in the record establishes a common, industry-wide requirement for any baccalaureate or higher degree, or the equivalent, in any specific specialty.

Additionally, as the discussion in section I above shows, the *Handbook* indicates that there is no such degree standard in the motorcycle mechanic industry.

B. Degree necessitated by the complexity or uniqueness of the position.

The record fails to establish that the proffered position is either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform it. In

fact, the position is that of an experienced motorcycle mechanic with training and supervisory duties. As discussed in section I above, such a position does not require a baccalaureate degree.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A)(3).

The petitioner presented no evidence on this issue, as this is the first time that the proffered position has been offered.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.
-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

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 bachelor's degree or higher in a specific specialty. In fact, the duties appear no more specialized or complex than what should be expected from supervisory motorcycle mechanic positions in general, and such positions do not require a baccalaureate degree in any field. Accordingly, 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).

The second issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position. While the proffered position is not a specialty occupation, it will be assumed that it is, for the purposes of this discussion only.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state

of intended employment; or

4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Evidence of record relevant to the beneficiary's qualifications includes: (1) a copy of the beneficiary's resume; (2) letters from five of the beneficiary's previous employers; and (3) diplomas and certificates related to training courses completed by the beneficiary.

The documentary evidence includes no evidence of any U.S. or foreign baccalaureate or higher degree and no evidence of any license, registration, or certification to practice a specialty occupation. This leaves only 8 C.F.R. § 214.2(h)(4)(iii)(C) (4). With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree under this provision, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

> [E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:
>
> (1) 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.
>
> (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
>
> (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
>
> (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to

grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be

> significant contributions to the field of the specialty occupation.

The record does not contain any of documents specified in the first four sections of this provision.

This reduces the AAO's consideration to the last section, that is, the provision authorizing CIS to make an independent determination, based on the evidence of record, "that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience."

Despite counsel's view to the contrary, there is no basis for CIS to employ this section's conversion of "three years of specialized training and/or work experience" into a year's worth of college. First, it has not been "clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation." Second, the evidence of record does not establish that the beneficiary's "experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation." Finally, the record does not contain any documentation of expertise in a specialty area such as described in this provision's subsections (i) through (v).

As related in the discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). Likewise, the evidence of record does not establish that the beneficiary is qualified to serve in 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. Accordingly, the appeal will be dismissed.

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