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U.S. Citizenship and Immigration Services

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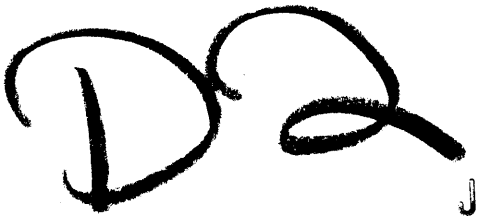


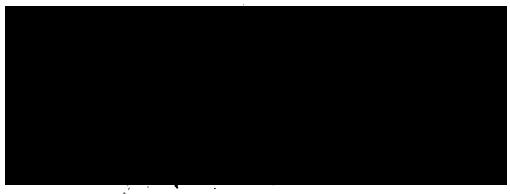
JAN 27 2004

FILE: WAC 02 142 50926 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:



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 a German auto repair company that also designs and develops off track racing vehicles. It seeks to employ the beneficiary as a mechanical engineering technician. 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 the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 Notice of Intent to Deny, dated March 29, 2002; (3) the petitioner's response to the director's notice; (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 mechanical engineering technician. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's March 21, 2002 letter in support of the petition; and the petitioner's response to the director's Notice of Intent to Deny. According to this evidence, the beneficiary would perform duties that entail: diagnosing, maintaining and repairing complex automotive products. The beneficiary would also assist in the design and construction of off-road racing vehicles produced by the petitioner. With regard to this design work, the beneficiary would design and implement changes to the engines used in the racing vehicles. The petitioner indicated that most qualified job applicants would obtain the necessary theoretical and practical knowledge for the proffered position through a combination of educational programs and several years of on-the-job training or apprenticeship programs.

The director found that the proffered position was not a specialty occupation because the job, as a mechanical engineering technologist, involved more practical design and production work rather than more theoretical and scientific knowledge. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2000-2001 edition, 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, the petitioner states that Citizenship and Immigration Services (CIS) has given insufficient weight to the fact that the beneficiary is much more than an experienced automobile mechanic. The petitioner describes the beneficiary as a leading-edge designer and fabricator of very complex machines, namely, off-road racing vehicles. The petitioner provides no further documentation to substantiate this statement.

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. With regard to the instant petition, the AAO does not concur with counsel or the director that the proffered position is that of a mechanical engineering technician. It should be noted that the petitioner submitted no documentary evidence to substantiate its claim that the beneficiary is a leading edge designer and fabricator of very complex off road racing vehicles. 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*, 14 I&N Dec. 190 (Reg. Comm. 1972). This proceeding will only consider the description of the duties originally outlined by the petitioner in its petition. As stated previously, the beneficiary will diagnose, maintain, and repair automotive products. With regard to the work to be performed on the off-road racing vehicles, the petitioner stated that the beneficiary would work on changes to the engines of such machines. As such, the proffered position does not appear analogous to the *Handbook*'s

mechanical engineering technician classification, which appears applicable to individuals working with industrial machinery, consumer products, and other equipment in manufacturing assembly lines. According to the *Handbook*, these technicians also appear to work in conjunction with mechanical engineers which is not the case in the instant petition.

The proffered position appears analogous to the automotive service technicians and mechanics classification described on page 487 in the 2002-2003 edition of the *Handbook*. The position does not appear to be an entry-level automotive service technician position, but rather a position with specific emphasis on European car models and the improvement of the performance of off-road racing vehicles. According to the *Handbook*, this classification does not require a baccalaureate degree in a specific specialty for entry into the position. It should be pointed out that in the cover letter to its original petition, the petitioner also did not indicate that a baccalaureate degree was necessary to obtain the knowledge needed to perform the job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no documentary evidence with regard to the academic credentials for individuals employed at other car automotive repair companies in similar positions. 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 has, thus, 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. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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. As previously stated, the petitioner's statement as to the beneficiary's work that is involved in leading edge design and fabrication of off-road racing vehicles was not substantiated in the record. With regard to the petitioner's statements concerning the beneficiary's work in improving the engines of off-road racing vehicles, this work is not seen as necessarily complex or specialized. 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. In reviewing the materials submitted to the record with regard to the beneficiary's qualifications, Dr[redacted] does appear to have the authority to grant college-level credit for candidates' foreign educational credentials, training, and/or employment experience at Ohio State University. However, his analysis of the beneficiary's employment history and level of job responsibilities is not persuasive. For example, the record is not clear as to how Dr[redacted] arrived at his description of the beneficiary's job responsibilities and level of responsibility at either [redacted] or [redacted] in Denmark.. Upon a review of the record, no other materials are on the record with regard to the job duties of the beneficiary's previous employment, other than the beneficiary's curriculum vitae that simply lists his job titles and periods of

employment at both companies. Since the AAO is dismissing the appeal because the job is not a specialty occupation, it will not further discuss the beneficiary's qualifications.

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.