

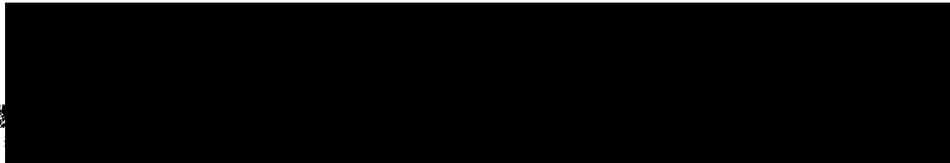
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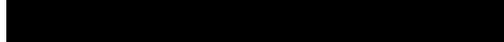
U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 039 52653 Office: NEBRASKA SERVICE CENTER Date: ~~MA~~

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, 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 an engineering company that manufactures automotive engine control systems. It seeks to employ the beneficiary as a manufacturing supervisor 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 ground that the record did not establish that the beneficiary is qualified 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.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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

- (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.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on 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 or 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 the Service [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 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 ¹ 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 of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an engineering company established in 1982, with over 200 employees and gross annual income of \$22 million, that combines automotive engine development services with advanced electronics to major automotive manufacturers, component suppliers, and engine research organizations. The petitioner proposes to employ the beneficiary as its new manufacturing supervisor to oversee manufacturing planning, logistics, and inventory control for the company's aftermarket engine programs on behalf of DaimlerChrysler, one of the petitioner's largest customers. The duties of the position were listed as follows in a letter accompanying the petition:

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used.

8 C.F.R. § 214.2(h)(4)(ii).

- Overseeing all aspects of engine build development, from concept/prototype, through to pre-production planning and then to product launch.
- Supporting teams of automotive engineers in the design and testing of engine components, such as intake manifold, cylinder heads, camshafts, exhaust manifolds, etc.
- Supporting and scheduling of prototype builds for dynamometer testing and related vehicle platform builds.
- Planning, reviewing, and managing material stores required for prototype builds.
- Overseeing suppliers and quality control initiatives.
- Developing and managing all related budgetary issues.
- Liaising with external clients and other internal departmental leads.
- Providing regular technical and project reporting to senior management, as required.

The petitioner asserted that the beneficiary was qualified for the position based on more than thirty years of progressively responsible work experience and technical training in automotive systems engineering, including all aspects of automotive engine development and manufacturing.

In its subsequent response to the RFE the petitioner provided a more detailed description of the manufacturing supervisor position, indicated that a bachelor's degree in engineering or its functional equivalent was required, and asserted that the position qualified as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner submitted a letter from the managing director of a British company, KW Engineering Ltd., confirming that it employed the beneficiary from March 1985 to September 1996, initially as a toolmaker, later as a CNC (computer numerically controlled) programmer/planner, and ultimately as a supervisor/project planner. The petitioner also submitted a letter from the human resources director of a U.S. company, Ricardo, Inc., who confirmed that the beneficiary worked for its British parent – Ricardo Consulting Engineers Ltd. – as an “engine build supervisor” from September 1, 1996 to July 1, 1997. This letter supplemented a previously submitted letter from the human resources director confirming that the beneficiary's position with the British parent was upgraded to “engine build manager” as of July 1, 1997, that he was transferred to the U.S. subsidiary in March 2001, and that he continued to work for the company through January 2002. In addition, the petitioner submitted an evaluation of the beneficiary's education, training, and experience by [REDACTED] of the Ohio State University Department of Mechanical Engineering, who declared that the beneficiary's nearly seventeen years of work experience in mechanical engineering, together with some specialized training in computer aided engineering in 1990 and 1991, is comparable to a bachelor of science degree in mechanical engineering, with a concentration in computer aided engineering, from an accredited institution of higher education in the United States. Along with the letter from [REDACTED] the petitioner submitted a letter from [REDACTED] Chair of the Ohio State University Mechanical Engineering Department, who confirmed that university faculty have the authority to grant college level credit for training and experience and that [REDACTED] has such authority in the field of mechanical engineering. According to the petitioner, the evaluation from Prof. Parker and the letter from his department chair fulfilled the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and qualified the beneficiary to perform the services of the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The director determined that the beneficiary was not qualified to perform the services of a specialty occupation. In particular, the director found that the documentation underlying the credentials evaluation from [REDACTED] was insufficient to establish that the beneficiary's education, specialized training,

and/or progressively responsible experience is equivalent to a U.S. baccalaureate or higher degree. Therefore, the beneficiary did not meet the qualification requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Nor did the beneficiary meet the alternative qualification requirements for a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1), (2), or (3).

On appeal counsel asserts that the director improperly conflated the regulatory provisions of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (5) in his analysis of the evidence. Counsel reiterates the petitioner's claim that the evaluation of the beneficiary's education, training and experience by Prof. Parker, together with the letter from his department chair, fulfills the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), thereby qualifying the beneficiary to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The AAO does not agree with counsel. The letter from the Chair of Ohio State University's Department of Mechanical Engineering does not state that the university has a program for granting college-level credit for an individual's training and/or work experience in a specialty occupation, as required for Prof. [REDACTED] evaluation of the academic equivalence of the beneficiary's work experience and training to be considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Therefore, the only way the beneficiary could be qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is if he meets the documentary requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Since the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires three years of training or work experience in areas related to the specialty for each year of college-level training the beneficiary lacks, and the beneficiary in this case has no college-level training, twelve years of specialized training and/or work experience must be documented. As previously discussed, the petitioner has submitted letters from (1) the managing director of KW Engineering Ltd., confirming that it employed the beneficiary from March 1985 to September 1996, initially as a toolmaker, later as a CNC (computer numerically controlled) programmer/planner, and ultimately as a supervisor/project planner and (2) from the human resources director of Ricardo, Inc., who confirmed that the beneficiary worked for Ricardo Consulting Engineers Ltd. as an "engine build supervisor" and later as an "engine build manager" from September 1, 1996 until January 2002. According to the letters, therefore, the beneficiary has nearly seventeen years of progressively responsible work experience in the specialty area of mechanical engineering. However, there is no indication in the letters or elsewhere in the record that the beneficiary's experience was gained while working with peers, supervisors, or subordinates with degrees or their equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the specialty such as those listed in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i) through (v). Accordingly, the beneficiary does not meet the documentary requirements of the regulation.

For the reasons discussed above, the record fails to establish that the beneficiary has training and progressively responsible work experience equivalent to a bachelor's degree in mechanical engineering, as required for him to meet the qualifying criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) to perform the services of the specialty occupation.

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.

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