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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 248 51609 Office: CALIFORNIA SERVICE CENTER Date: **JUL 14 2006**

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, Chief
Administrative Appeals Office

DISCUSSION: The 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 owns and operates two gas stations/convenience stores which also provide automotive repair services. It seeks to employ the beneficiary as a mechanical engineer. 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 on the basis of his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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:

An 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 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 proposed position.

According to the H Supplement to the Form I-129, the duties of the proposed position would include planning, managing, and preparing materials, costs, and timing estimates; supervising and inspecting the installation, modification, and commissioning of mechanical systems for cars and trucks; developing maintenance standards, schedules, and programs; investigating mechanical failures or unexpected maintenance problems; supervising technicians, technologists, and other engineers; and reviewing and approving work orders, calculations, and cost estimates. On appeal, counsel notes that the beneficiary would also oversee the repair and maintenance of “more than 10” gasoline pumps at the beneficiary’s two locations.

The director denied the petition, finding that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. In denying the petition, the director held that the duties of the proposed position were essentially those of automotive service technician and mechanic. On appeal, counsel contends that the director erred in denying the petition, and that the duties of the proposed position are similar to those of a mechanical engineer.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* notes that, generally, engineers “apply the principles of science and mathematics to develop economical solutions to technical problems.” When developing new products, they consider many factors. “Their work is the link between perceived social needs and commercial applications.”

The 2006-2007 edition of the *Handbook* states the following with regard to the employment of mechanical engineers:

Mechanical engineers research, develop, design, manufacture, and test tools, engines, machines, and other mechanical devices. They work on power-producing machines such as electric generators, internal combustion engines, and steam and gas turbines, as well as power-using machines such as refrigeration and air-conditioning equipment, machine tools, material handling systems, elevators and escalators, industrial production equipment, and robots used in manufacturing. Mechanical engineers also design tools that other engineers need for their work. Mechanical engineering is one of the broadest engineering disciplines. Mechanical engineers may work in production operations in manufacturing or agriculture, maintenance, or technical sales; many are administrators or managers.

Such duties are not consistent with those of the proposed position. The beneficiary would not be researching, developing, designing, or manufacturing anything. The materials with which he would be working have already been designed, developed, and manufactured by engineers. The petitioner has not established that the duties of its proposed position require an individual with a mechanical engineering degree.

Rather, the AAO agrees with the director that the duties of the proposed position are similar to those of automotive service technicians and mechanics. The *Handbook* offers the following information:

The work of automotive service technicians and mechanics has evolved from mechanical repair to a high technology job . . . Technicians must have an increasingly broad base of knowledge about how vehicles' complex components work and interact, as well as the ability to work with electronic diagnostic equipment and computer-based technical resource materials.

When mechanical or electrical troubles occur, technicians first get a description of the symptoms from the owner or, if they work in a large shop, from the repair service estimator or service advisor who wrote the repair order. To locate the problem, technicians use a diagnostic approach . . .

During routine service inspections, technicians test and lubricate engines and other major components. In some cases, the technician may repair or replace worn parts before they cause breakdowns that could damage critical components of the vehicle. Technicians usually follow a checklist to ensure that they examine every critical part. Belts, hoses, plugs, brake and fuel systems, and other potentially troublesome items are among those closely watched.

Service technicians use a variety of tools in their work—power tools, such as pneumatic wrenches to remove bolts quickly; machine tools like lathes and grinding machines to rebuild brakes; welding and flame-cutting equipment to remove and repair exhaust systems, and jacks and hoists to lift cars and engines. They also use common hand tools, such as screwdrivers, pliers, and wrenches, to work on small parts and in hard-to-reach places.

Computers also have become commonplace in modern repair shops. Service technicians compare the readouts from computerized diagnostic testing devices with the benchmarked standards given by the manufacturer of the components being tested. Deviations outside of acceptable levels are an indication to the technician that further attention to an area is necessary. A shop's computerized system provides automatic updates to technical manuals and unlimited access to manufacturers' service information, technical service bulletins, and other databases that allow technicians to keep current on problem spots and to learn new procedures.

The *Handbook* states the following with regard to the educational qualifications necessary for entry into this field:

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 in a postsecondary vocational school or community college. However, some service technicians still learn the trade solely by assisting and learning from experienced workers. Courses in automotive repair, electronics, physics, chemistry, English, computers, and mathematics provide a good educational background for a career as a service technician.

The proposed position does not qualify under the first criterion, as a bachelor's degree is not the normal minimum entry requirement for such positions. Accordingly, the petitioner has not established its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no such evidence has been presented.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to the automotive service technician and mechanic positions discussed in the *Handbook*, which do not require a bachelor's degree. The record contains no documentation to support a finding that the proposed position is so complex or unique that, in contrast to many such positions with no degree requirement, it can only be performed by an individual with at least a bachelor's degree, or its equivalent, in a specific specialty.

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no such evidence has been presented.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 of the proposed position 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. There is no information in the record to support a finding that the duties of the proposed position are more specialized and complex than the duties of the

automotive service technician and mechanic positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.

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