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U.S. Citizenship  
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Services

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*DL* JAN 21 2005

FILE: SRC 03 191 50277 Office: TEXAS 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*

*for* Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner, a car dealership and service center, seeks to employ the beneficiary as an automotive electronics 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 because the position is not a specialty occupation. On appeal, counsel asserts that the director's decision is not supported by the evidence of record, which, according to counsel, established that the proffered position is an engineer position.

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.

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 petitioner's letter of support; (3) the director's request for additional evidence (RFE), dated July 12, 2003; (4) the petitioner's response to the RFE; (5) the director's denial letter; and (6) the Form I-290B, counsel's brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an automotive electronics engineer. The petitioner described itself as the world's largest Chevrolet retailer with dealerships in seven states. The beneficiary would work in the Sanford, Florida dealership and service center. In its letter of support, the petitioner stated that it needed a person with a specific educational background and experience to oversee and evaluate the testing and repair of the highly complex electronic equipment found onboard today's new automobiles. According to the petitioner's response to the RFE, the beneficiary would: oversee and evaluate current testing procedures (25 per cent of worktime); evaluate onboard systems exhibiting problems and make recommendations for changes to both the maintenance facility and the factory to increase reliability (25 per cent of worktime); evaluate the petitioner's maintenance procedures and make recommendations to the maintenance facility to increase efficiency (25 per cent of worktime); and evaluate the installation of onboard problematic operational systems and recommend design modifications to the factory to eliminate causes of malfunctions/maladies (25 per cent of worktime). The petitioner stated that it required a candidate to possess a bachelor's degree, or the equivalent in combined progressive experience and/or education.

The director denied the petition upon determining that the proposed duties are encompassed by the automotive service technician occupation as described in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, an occupation for which, according to the *Handbook*, employers do not normally require at least a bachelor's degree or its equivalent in a specific specialty. The director noted that the duties of automotive technicians are becoming increasingly specialized and that the *Handbook* took into account that today's automobiles include integrated electronics systems and complex computers. The director also stated that the evidence of record contained no clear evidence that the proffered position involved an engineering process or required an engineer to perform the duties of the position. The director also determined that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is closely comparable to electrical and electronics engineer positions as described in the *Handbook* and DOL's *Dictionary of Occupational Titles (DOT)*. Counsel asserts that the electronics engineers are not exclusively found in the manufacturing sector, and notes that the *Handbook* also refers to electronics engineers in the transportation industry. Counsel also asserts that the director did not consider the expert opinion provided by Dr. [REDACTED] who is a professor and the department head at the University of Tennessee's industrial engineering department.

Upon review of the entire record, the AAO has determined that the director's decision to deny the petition was correct. As discussed below, the petitioner has not satisfied any specialty occupation criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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* as an authoritative source of information about the duties and educational requirements of particular occupations. As correctly noted by the director, the proffered position comports with the automotive services technician occupation as addressed in the 2004-2005 edition of the *Handbook*. Counsel's assertion that the director placed undue emphasis on the idea that engineers work in the manufacturing sector is not persuasive. Also, counsel's observation that the *Handbook* states that electrical and electronic engineers are employed in the transportation industry is correct but not probative, as this reference is to transportation as a subdivision of civil engineering. More to the point, the *Handbook* (at page 126 of the 2004-2005 edition) identifies "motor vehicles" as one of the industries in which an engineer may specialize. However, the record of proceeding describes the proffered position and its duties exclusively in generic and generalized terms that do not establish that the position would require possession and application of at least a bachelor's degree level of knowledge in engineering or any other specialty.

The AAO does not take issue with [REDACTED] opinion that "the position of Automotive Electronics Engineer in the Field of Automotive Engineering Technology is clearly a specialty occupation, and requires the services of someone with at least a Bachelor's degree in Automotive Engineering Technology or a related field." However, the AAO discounts [REDACTED] valuation to the extent that it is submitted to establish that the petitioner is proffering such a position here.

This professor from Tennessee specifically references only the aforementioned four generic and generalized duties from the RFE reply. He describes none of the specific tasks that the petitioner's particular position would require. He presents no evidence of any tours of this California petitioner's facilities or of any study of any of the specific operations that might require a specialty degree. Nor does the professor identify and discuss any elements of a bachelor's degree level of automotive engineering technology or related specialty knowledge that performance of the duties would require. In short, the professor's opinion on the educational requirements of the proffered position lacks a factual basis of reliability. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Accordingly, on the issue of whether the proffered position requires a degree in a specific specialty the AAO accords no evidentiary significance to the professor's opinion.

It is noted that counsel does not assert that the proffered position is one for which the petitioner's industry has a common specialty-degree requirement for recruiting and hiring. The petitioner stated that it is the largest Chevy retailer in the United States and it sets its own standards with regard to hiring practices. Nevertheless, the petitioner provided no further documentary evidence with regard to any similar positions in its other

dealerships in seven states, and the academic requirements for such positions. The petitioner did not provide documentation from professional marketing associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the particular position. As just discussed, the AAO did not accept [REDACTED] opinion as establishing that the proffered position is an automotive electronic engineering position and requires at least a bachelor's degree in automotive engineering technology or a related specialty.

Also, the petitioner's exclusively generic and generalized descriptions of the proffered position did not demonstrate complexity or uniqueness that requires a person with a bachelor's degree in a specific specialty.

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 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 – is not a factor, as the petitioner has stated that this is the first time that the proffered position has been offered.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(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. The limited extent to which the proposed duties are described do not establish such specialization and complexity. In fact, the record does not establish that the performance requirements of the proposed duties would exceed the level of knowledge usually associated with automotive service technicians, which, as the *Handbook* reports, is not a bachelor's degree.

Because the petitioner has not satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition. The appeal shall be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO notes that the petitioner has also failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), and the CIS regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

Specifically, the evidence of record does not establish that the beneficiary holds the equivalent of a U.S. baccalaureate degree in a specific specialty. The petitioner relies upon a May 13, 2003 "Evaluation of Academics and Experience" rendered by [REDACTED] of the State University of New York at Stony Brook (SUNY/SB), which to a large extent is based upon an assessment of the beneficiary's work experience. However, this evaluation is defective, as neither this submission nor any other evidence of record establishes that, at the time of his evaluation [REDACTED] was authorized to award experience-based college-level credit. See 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1) and (3), which establish that CIS accepts only those educational equivalency evaluations that are rendered by persons who, at the time of the evaluation, are authorized by an accredited U.S. college or university to grant experience-based college-level credit in the specific specialty that is pertinent to the petition. The AAO accords no weight to the August 7, 2002 letter that the Director of Assessment Services at Empire State College (SUNY/EAC) provided as an endorsement for [REDACTED]. The SUNY/EAC assessment director's letter does not establish his authority to speak for SUNY/SB, the educational institution where [REDACTED] employed. Furthermore, the assessment director's letter does not

state that [REDACTED] is authorized to grant college level credit, or that SUNY/SB has a program for granting college level credit based on work experience. For this reason also the petition must be denied.

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.