



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

D2



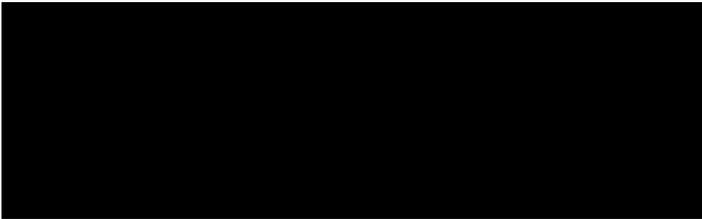
FILE: EAC 02 261 52984 Office: VERMONT SERVICE CENTER Date: OCT 17 2005

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 repairs heavy duty transport, construction and fire department vehicles, and seeks to employ the beneficiary as a Class A Diesel Mechanic. The petitioner 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 does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, 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 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:

[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.

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 are 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) 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a Class A Diesel Mechanic. Evidence of the beneficiary’s duties was set forth in the Form I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would work as a diesel mechanic specializing in CAT, Cummins, Mack, International and Detroit engines. The beneficiary is required to have experience in electronics, as well as experience in rebuilding components including fuel injection pumps, oil pumps, turbos, and air compressors. The beneficiary will also be required to remove, rebuild and install all industrial transmissions, including CAT and ZF models/brands.

The petitioner requires a minimum of a BS degree in Mechanical Engineering or its equivalent for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for diesel service technicians and mechanics. Diesel service technicians and mechanics repair and maintain trucks, buses, and locomotives. Some diesel technicians and mechanics also work on heavy vehicles and mobile equipment, including bulldozers,

cranes, road graders, farm tractors and combines. Diesel maintenance is becoming increasingly complex as more electronic components are used to control the operation of an engine. The *Handbook* notes that although many persons qualify for diesel service technician and mechanic jobs through years of on-the-job training, authorities recommend the completion of a formal diesel engine training program as employers prefer to hire graduates of formal training programs. Many community colleges and trade and vocational schools offer programs in diesel repair, with programs lasting from six months to two years and leading to an associate degree or certificate of completion. It is, therefore, apparent that a bachelor's degree in a specific specialty is not required for entry into the position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted an opinion letter from Dr. Damian Rouson, an Assistant Professor of Mechanical Engineering at the City University of New York. Dr. Rouson states that companies seeking to employ Class A Diesel Mechanics in the field of mechanical engineering technology require prospective candidates to possess a minimum of a bachelor's degree in the area of mechanical engineering technology. Dr. Rouson does not, however, provide any basis for his opinion such as an industry or labor survey, study, or other source of authoritative information, and his opinion conflicts with the findings noted in the *Handbook* for the educational requirements of the position. In discussing the sophistication of the duties of the proffered position, Dr. Rouson refers to duties not assigned to the present position and which are not of record. For example, he states that "[t]he skills required in order to manage and develop projects, oversee architects and other engineers, manage and arrange for the application of blueprints, work with bid estimators, schedule and provide estimates, meet with company executives, and oversee troubleshooting, are often taught in courses of Mechanical Engineering Technology, Production Management, Personnel Management, Operations Research, and related areas." These duties are totally unrelated to the requirements of the offered position and bear no rational basis to the complexity of the proffered position. Citizenship and Immigration Services (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). Dr. Rouson's opinion will, therefore, be given little weight and is of no evidentiary value. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine in the industry for Class A Diesel Mechanics. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation. It has been determined that the offered position does not qualify as a specialty occupation, thus, there would be no regulatory requirement that the petitioner possess any specific level of education in order to

qualify to perform the duties of that position. Suffice it to say that the petitioner deems the beneficiary qualified to perform the duties of the position based upon his past education, training, and experience. That determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS.

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 burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal shall accordingly be dismissed.

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