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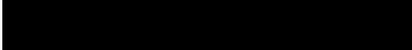
**U.S. Citizenship  
and Immigration  
Services**

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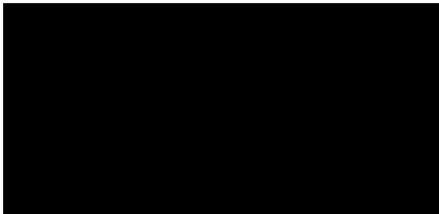
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FILE: EAC 04 256 51355 Office: VERMONT SERVICE CENTER Date: **SEP 06 2006**

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.

*for Michael T. Kelly*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 car dealership that 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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) 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.

The petitioner is seeking the beneficiary's services as a mechanical engineer. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would oversee the used car department. He will oversee installation, operation, maintenance, and repair of automotive heating and air conditioning units and engine re-construction by applying knowledge of engineering principles and procedures; direct and coordinate installation activities ensuring that equipment and products conform to engineering design and customer specifications; coordinate operation, maintenance, and repair activities to obtain the optimum use of machines and equipment and evaluate installations and recommend modifications; and research and analyze data such as automotive equipment manuals to determine the feasibility of applications. For the proposed position the petitioner asserts that it requires a bachelor's degree or its equivalent in mechanical engineering or a related field.

The director stated that the proposed duties do not require a theoretical and practical application of a body of highly specialized knowledge. The director found that the duties correspond to those of an automotive technician, and that such an occupation does not require a bachelor's degree. According to the director, an engineer designs the heating and air conditioning unit, and an automotive technician repairs and restores it.

On appeal, counsel states that because the request for evidence (RFE) did not indicate that the proposed position failed to qualify as a specialty occupation the petitioner was not given an opportunity to rebut the director's denial on this ground. Counsel refers to the February 15, 2005 memorandum from the Associate Director, Operations, regarding the issuance of a RFE or a Notice of Intent to Deny (NOID)<sup>1</sup> to support her assertion. Counsel maintains that the proposed position is similar to a mechanical engineer.

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.

Counsel contends on appeal that the director's RFE sought information regarding the beneficiary's qualifications; but that the RFE failed to solicit further evidence to establish that the offered position qualified as a specialty occupation. The AAO finds that even if the director had committed a procedural error by failing to solicit further evidence regarding the offered position, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact an opportunity to supplement the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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<sup>1</sup> Memorandum from William Yates, Associate Director, Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, HQOPRD 70/2 (February 16, 2005).

In determining whether the offered position qualifies as a specialty occupation, the AAO first considers 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 2006-2007 edition of 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO finds that the *Handbook* confirms the director's finding that the offered position mirrors the occupation of automotive service technician, which is an occupation that the *Handbook* indicates does not require a baccalaureate degree. This occupation is described in the *Handbook* as follows:

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. First, they test to see whether components and systems are proper and secure. Then, they isolate the components or systems that could not logically be the cause of the problem. For example, if an air-conditioner malfunctions, the technician's diagnostic approach can pinpoint a problem as simple as a low coolant level or as complex as a bad drive-train connection that has shorted out the air conditioner. Technicians may have to test drive the vehicle or use a variety of testing equipment, such as onboard and hand-held diagnostic computers or compression gauges, to identify the source of the problem. These tests may indicate whether a component is salvageable or whether a new one is required to get the vehicle back in working order.

...

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.

...

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.

...

*Automotive air-conditioning repairers* install and repair air-conditioners and service their components, such as compressors, condensers, and controls. These workers require special training in Federal and State regulations governing the handling and disposal of refrigerants.

The beneficiary's duties are encompassed within the description of an automotive service technician. The proposed duties, for instance, to oversee engine re-construction and the installation, operation, maintenance, and repair of heating and air conditioning units parallels the technician's duty to install and repair air-conditioners and work on a vehicle's transmission, brakes, exhaust systems, electronic components, and overall systems.

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. The *Handbook* reveals that the offered position mirrors an automotive service technician, an occupation that does not require a baccalaureate degree. No evidence in the record indicates that the offered position has a complexity or uniqueness that would require a baccalaureate degree in mechanical engineer or a related field. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that the proposed duties mirror those of an automotive service technician, an occupation that does not require a baccalaureate degree. No evidence of record suggests that the nature of the offered position is so specialized and complex as to require knowledge that is usually associated with the attainment of a baccalaureate degree in mechanical engineering or a related field. Accordingly, the petitioner fails to establish 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 on this ground.

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.