

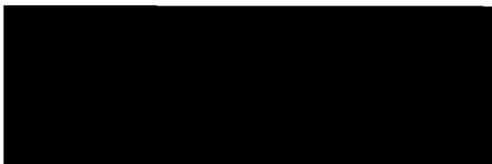
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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Date: JAN 31 2012 Office: CALIFORNIA SERVICE CENTER

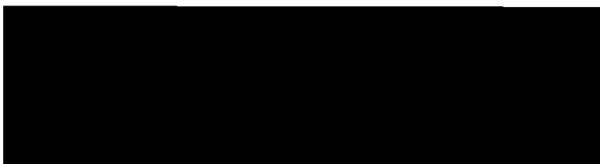


IN RE:



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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, 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 sustained. The petition will be approved.¹

The petitioner claims to be a European automobile sales and servicing company with 106 employees and a gross annual income of \$4,037,000.00. It seeks to continue to employ the beneficiary as a quality control engineer 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 grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has overcome the director's sole ground for denying this petition.

A review of the duties of the proffered position demonstrates that the proffered position is most akin to a mechanical engineer as listed under the occupational category of Engineers set forth in the 2010-2011 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook*. This occupational category requires the theoretical and practical application of a body of highly specialized knowledge commensurate with at least a bachelor's degree in the specific discipline of mechanical engineering or its equivalent for entry into the occupation in the United States. The petitioner has therefore established that the position proffered here qualifies for classification as a specialty occupation. In addition, we have reviewed the qualifications of the beneficiary and find him qualified to perform the duties of an H-1B mechanical engineer.²

¹ It is noted that the petitioner has requested a validity date ending March 14, 2011 pursuant to the "American Competitiveness in the Twenty-First Century Act" (AC21) as amended by the "Twenty-First Century Department of Justice Appropriations Authorization Act" (DOJ21). *See* Pub. L. No. 106-313, § 106(a) and (b), 114 Stat. 1251, 1253-54 (2000); Pub. L. No. 107-273, § 11030A(a) and (b), 116 Stat. 1836-37 (2002). As the denial of the immigrant petition filed by the petitioner on behalf of the beneficiary is now final in that the appeal of that decision was dismissed on November 16, 2010, the instant petition can only be approved with a validity date ending November 16, 2010.

² The AAO notes that the immigrant petition filed by the petitioner on behalf of the beneficiary was denied and the appeal dismissed on November 16, 2010, because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification. With respect to the instant petition, the AAO again notes that the beneficiary does not have 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 as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). However, upon review, the petitioner has sufficiently established that the beneficiary has a combination of education that is equivalent to completion of a United States baccalaureate degree in the specialty occupation, as well as recognition of

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The appeal is sustained. The director's August 2, 2010 decision is withdrawn, and the petition is approved, valid from March 15, 2010 until November 16, 2010.

expertise in the specialty through progressively responsible positions directly related to the specialty as alternatively required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Thus, the AAO finds that the beneficiary is qualified to perform the duties of the proffered H-1B specialty occupation.