



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: MAR 20 2015 OFFICE: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it has four employees and was established in [REDACTED]. On the Labor Condition Application (LCA) submitted with the petition, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 81111.¹ This NAICS code is designated for "Automotive Mechanical and Electrical Repair and Maintenance." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in providing mechanical or electrical repair and maintenance services for automotive vehicles, such as passenger cars, trucks, and vans, and all trailers. These establishments may specialize in a single service or may provide a wide range of these services.

U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 81111 – Automotive Mechanical and Electrical Repair and Maintenance, <http://www.census.gov/cgi-bin/sssd/naics/naicsrhh> (last visited Mar. 11, 2015). In order to employ the beneficiary in what it designates as an "Engineering Management" position,² the petitioner seeks to classify him as a

¹ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Mar. 11, 2015).

It is noted that the petitioner designated a different NAICS code in the H-1B Data Collection and Filing Fee Exemption Supplement at Part A.6. The petitioner designated the code as 541330 which is the NAICS code for "Engineering Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following: This industry comprises establishments primarily engaged in applying physical laws and principles of engineering in the design, development, and utilization of machines, materials, instruments, structures, processes, and systems. The assignments undertaken by these establishments may involve any of the following activities: provision of advice, preparation of feasibility studies, preparation of preliminary and final plans and designs, provision of technical services during the construction or installation phase, inspection and evaluation of engineering projects, and related services.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

² On the other hand, the petitioner states that the "Job Title" is "Mechanical Engineer" on the LCA. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective

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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The LCA submitted to support the visa petition states that the proffered position is a "Mechanical Engineer" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 17-3027, Mechanical Engineering Technicians, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary has a high school diploma, evidence pertinent to the beneficiary's employment history, and evidence pertinent to training the beneficiary has received. A credential evaluation in the record states that the beneficiary's education and experience, considered together, are equivalent to a "Bachelor's Degree of Engineering Management and Leadership."

The evidence pertinent to the beneficiary's employment history shows that he has extensive experience in maintenance and repair of engines and managing mechanics.

On February 13, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted: (1) a print-out of an article from the [REDACTED] website pertinent to the requirements of Auto Shop Manager positions; (2) a letter, dated March 7, 2014, on the petitioner's letterhead signed by [REDACTED] and (3) counsel's own letter, dated April 23, 2014.

The diplomaguide.com article about the requirements of Auto Shop Manager positions states, *inter alia*: "At least ten years of experience as a mechanic or a combination of education and experience is required. An associate's degree in Automotive Repair or a related field is preferred."

We note that [REDACTED] March 7, 2014 letter does not specify Mr. [REDACTED] position in the petitioner's operation. Mr. [REDACTED] states that the beneficiary would be involved in motorcycles, automobiles, buses, and trucks "with special emphasis on the building and rebuilding of [their] engines." He states the following as the duties of the proffered position:

evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

- Decide on the most appropriate materials for component production;
- Apply mechanical, thermodynamic, pneumatic, hydraulic and electrical principles to resolve engineering problems and find appropriate solutions;
- Build and rebuild prototypes of components, develop test procedures and conducting tests using software packages and physical testing methods;
- researching, designing and developing machinery and systems for automobiles;
- preparing material, cost and timing estimates, reports and design specifications;
- studying the energy, environmental and safety aspects of the planned work;
- supervising and inspecting the installation, modification and commissioning of mechanical systems in industrial facilities or plants;
- investigating mechanical failures or unexpected maintenance problems;
- Supervising technicians, technologists and other engineers, and reviewing and approving designs, calculations and cost estimates;
- liaising with suppliers and handling supply chain management issues;
- taking responsibility for individual projects, managing associated budgets, production schedules and resources (including staff), and supervising quality control;

In his April 23, 2014 letter, counsel stated:

The first inquiry centers of the fact of whether the position in the case at bar involves that of a specialty occupation. While it is conceded that an autobody repair business would not historically require a specialty occupation that is not true in this instance. Attached hereto as a detailed letter from the petitioner . . . indicating the exact and detailed nature of the case. The letter speaks for itself but in short, [the beneficiary] is functioning as an engineering in rebuilding engines and performing high level and sophisticated work involving the design, re-manufacturing and rebuilding of engines. Reference is made to exhibit A to establish this position as a specialty occupation.

[Verbatim.]

The director denied the petition on May 30, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by

virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In an addendum to the Form I-290B, the petitioner stated:

This appeal is premised upon the proposition that the USCIS erred in reaching the instant decision. The USCIS premised its denial upon the fact [the beneficiary] was in short working more akin to that of an auto mechanic rather than that of an automotive engineer. The evidence of record suggest the contrary decision should have been reached. The record of evidence established that the petitioner is engaged in automotive engineering. The record of evidence established that the petitioner is has automotive engineers as part of its business practice and further that [the beneficiary] presents a bachelor's degree in a specialized field with a nexus to the instant job of automotive engineering. The USCIS was premised upon mere speculation that the job was more mechanic than engineering but the entire USCIS case was premised upon supposition and not upon the record. The record was quite the opposite in fact and was premised supposition and not upon the substantial and credible evidence of record.

A full and complete brief will be supplemented in this instance in a timely fashion.

[Verbatim.]

The petitioner asserts in the brief referenced above that the evidence of record establishes that the beneficiary would develop and engineer new and repaired engines, and that the proffered position qualifies as a specialty occupation position.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. SPECIALTY OCCUPATION

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation.

A. Law

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed position must also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also*

COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp., 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

B. Analysis

The evidence points to the petitioner's business as being an automobile body repair shop. In his April 23, 2014 letter, counsel characterized the petitioner as "an autobody repair business." That the petitioner also rebuilds engines suggests that it performs other types of automobile repairs, in addition to body work. A review of the petitioner's website supports a finding that the petitioner is, as claimed by counsel, an auto body repair business.

The only evidence in the record that the petitioner performs any services beyond general automobile repairs is the description of the duties of the proffered position. The petitioner has not provided evidence to corroborate its claims that it has the kind of work it claims the beneficiary will perform such as "Apply[ing] mechanical, thermodynamic, pneumatic, hydraulic and electrical principles to resolve engineering problems," and "Build[ing] and rebuild[ing] prototypes of components." Also, there is no explanation of the following duty which indicates that the beneficiary will be working in an industrial facility or plant: "[S]upervising and inspecting the installation, modification and commissioning of mechanical systems in industrial facilities or plants." The petitioner has failed to demonstrate that its business has employees who perform such functions. The petitioner has also failed to demonstrate that the beneficiary's "[involve]ment" with "motorcycles, automobiles, buses[,] and trucks," "with special emphasis on the building and rebuilding of engines" for such vehicles involves any of those duties. Because the petitioner has not demonstrated that it has such work for the beneficiary to perform and that the beneficiary would, indeed, perform the duties it described, it has not established the substantive nature of the duties the beneficiary would actually perform if the visa petition were approved.

The failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

We note, further, that the LCA submitted is certified for a position categorized under SOC code and title 17-3027, Mechanical Engineering Technicians, from O*NET. We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The *Handbook* states the following about such positions:

What Mechanical Engineering Technicians Do

Mechanical engineering technicians help mechanical engineers design, develop, test, and manufacture mechanical devices, including tools, engines, and machines. They may make sketches and rough layouts, record and analyze data, make calculations and estimates, and report their findings.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the excerpt of the *Handbook* regarding the duties and requirements of the occupational category "Mechanical Engineering Technicians."

Duties

Mechanical engineering technicians typically do the following:

- Evaluate design drawings for new or changed tools by measuring dimensions on the drawings and comparing them with the original specifications
- Prepare layouts and drawings of parts to be made and of the process for putting them together
- Discuss changes with coworkers—for example, in the design of the part, in the way it will be made and put together, and in the techniques and process they will use
- Review instructions and blueprints for the project to ensure the test specifications and procedures are followed and objectives are met
- Plan, produce, and assemble new or changed mechanical parts for products, such as industrial machinery or equipment
- Set up and conduct tests of complete units and of parts as they would actually be used, as a way to investigate proposals for improving equipment performance
- Record test procedures and results, numerical and graphical data, and recommendations for changes in products or test methods
- Compare test results to design specifications and test objectives

Mechanical engineering technicians also estimate labor costs, equipment life, and plant space. Some test and inspect machines and equipment or work with engineers to eliminate production problems. They may assist in testing products by, for example, setting up instrumentation for vehicle crash tests.

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Mechanical Engineering Technicians," <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineering-technicians.htm#tab-2> (last visited Mar. 11, 2015).

The duties that the petitioner claims the beneficiary will perform are not the duties typically performed by mechanical engineering technicians. The *Handbook* states that "[m]echanical engineering technicians help mechanical engineers design, develop, test, and manufacture mechanical devices, including tools, engines, and machines." The petitioner makes no mention of mechanical engineers that the beneficiary will assist and there is no evidence of the mechanical devices that the beneficiary will assist in designing, developing, testing, and manufacturing. Also, that the petitioner is an auto body repair business leaves us to question the claimed duties that the beneficiary will perform such as "supervising and inspecting installation, modification and commissioning of mechanical systems in industrial facilities or plants." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the

remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In any event, the *Handbook* makes clear that mechanical engineering technician positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent, as it states that an associate's degree is an acceptable educational qualification for such positions.⁴ Further still, the LCA in this case was certified for a wage Level I mechanical engineering technician position, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation.⁵ Even if some mechanical engineering technician positions may require a minimum of a bachelor's degree in a specific specialty or its equivalent, a wage Level I mechanical engineering technician position likely would not, as such positions are at the very lowest level of mechanical engineering technician positions. Thus, if we were to accept the petitioner characterization of the proffered position as a wage Level I mechanical engineering technician position, we would still find that the proffered position has not been demonstrated to qualify as a specialty occupation position, as it would not have been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.⁶

For both reasons, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

III. BENEFICIARY QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also

⁴ See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Mechanical Engineering Technicians," <http://www.bls.gov/ooh/architecture-and-engineering/mechanical-engineering-technicians.htm#tab-4> (last visited Mar. 11, 2015).

⁵ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁶ If, on the other hand, we were to find that the proffered position is not a wage Level I mechanical engineering technician position, as characterized, then the visa petition would not be supported by a corresponding LCA, as required by 8 C.F.R. § 214.2(h)(4)(i)(B)(1), and we would be obliged to deny the visa petition pursuant to 20 C.F.R. § 655.705(b).

cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the record contains insufficient competent evidence to demonstrate that the beneficiary has the equivalent of a bachelor's degree in *any* specific specialty. The petitioner relies, in part, on the beneficiary's employment experience to show that he has the equivalent of a bachelor's degree. If a petitioner will rely on the beneficiary's employment experience, even in part, to show that equivalence, it must provide an evaluation of the beneficiary's credentials produced by "an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." See 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The petitioner provided an evaluation of the beneficiary's credentials, including employment experience. It is signed by [REDACTED] Director of Educational Credential Evaluation at [REDACTED] Virginia. It is accompanied by a description of Mr. [REDACTED] career and accomplishments, but not by evidence that he "has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience." The record contains insufficient competent evidence to demonstrate that the beneficiary has the equivalent of a bachelor's degree in *any* specific specialty. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in a specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

IV. CONCLUSION

The director's decision will be affirmed and the petition will be denied. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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