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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: LIN 00 004 52486 OFFICE: NEBRASKA SERVICE CENTER DATE: JAN 02 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an automobile sales and repair firm with seven employees and a gross annual income of $365,993. It seeks to employ the beneficiary as the director of its automotive division for a three years.

The director denied the petition because he found that the petitioner had failed to demonstrate that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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), 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 knowledge 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.

8 C.F.R. 214.2(h)(4)(ii) further defines the term "specialty occupation" as:

> an 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.

In the initial petition, the petitioner stated that the duties of the proffered position are to manage the auto sales and repair division of the company. The petitioner stated that the auto shop employs seven people.

The petitioner also provided a copy of the beneficiary's college diploma, an English translation of that diploma, and the report of an education evaluator stating that the beneficiary's diploma is the equivalent of a master's degree in mechanical engineering with a specialization in automotive engineering from an accredited college or university in the United States.

The director requested that the petitioner submit additional evidence pertinent to the proffered position. Specifically, the director requested evidence to demonstrate, pursuant to one of the four alternative criteria in 8 C.F.R. 214.2(h)(4)(iii)(A), below, that the proffered position is a specialty occupation. The director also requested that the petitioner provide a complete, detailed description of the duties to be performed by the beneficiary.

In response, counsel for the petitioner submitted her own letter, a letter from the petitioner's president, a letter from the Director of the Automotive Service Association of Oregon, and a more detailed description of the beneficiary's contemplated duties.

The letter from the petitioner's president stated that the proffered position "requires the theoretical and practical application of a body of highly specialized knowledge that is attained through the achievement of at least a bachelor's degree or the equivalent of a degree in Business Administration." The petitioner stated that the company employs approximately ten people and that the beneficiary would manage six to seven employees including the shop manager and the lead sales representative.

The letter from the Director of the Automotive Service Association of Oregon states that:

> The position of Director of the Automotive Division, or a parallel position within the auto industry, normally requires a bachelor's degree or its equivalent in experience . . . .

The description of the duties of the proffered position states the beneficiary's duties and the percentage of his time to be accorded each as follows:

Develop Sales and Marketing Strategies	25%
Employee Management	25%
Prepare and Present Department Budgets	10%
Establishing Key Accounts	10%
Quality Control, Efficiency Maximization, Technical Oversight	25%
Authorize and Monitor Customer and Warranty Policy Adjustments	5%

The letter from counsel states that the evidence provided demonstrates that the proffered position is a specialty occupation.

The director denied the petition because he found that the petitioner failed to demonstrate that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and a section of the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) pertinent to Blue-Collar Worker Supervisors. In the brief, counsel reasserts that the evidence, including that section of the Handbook, demonstrates that the position is a specialty occupation.

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.

Counsel's contention that the proffered position is a specialty occupation is unconvincing. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).

The Service often consults the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) when determining whether a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into a particular position.

On appeal, counsel states that "the closest match (among categories of workers in the Handbook) for a Director of Automotive Division position is Blue-Collar Worker Supervisors." Those positions are not perfectly parallel to the proffered position. Supervisors are principally concerned with overseeing and motivating employees, which constitute only a portion of the duties of the proffered position. The duties which the petitioner described in response to the Request for Evidence combine the duties of a first-line supervisor with those of a service manager and sales agent. Further, the petitioner asserted, in response to the Request for Evidence, that the beneficiary would supervise a shop manager and a lead sales representative. Those duties, too, are inconsistent with blue-collar supervisory positions. Because the duties of the proffered position do, however, include those of a blue-collar supervisor it shall be analyzed as a such.

The Handbook offers no support for the proposition that blue-collar supervisor positions uniformly require a either any bachelor's degree, a degree in a specific specialty, or the equivalent. Although the most recent edition of the Handbook does not include a description of blue-collar supervisor positions, the 2000 - 2001 edition covers those positions in depth. As to the training requirements for those positions, the 2000 - 2001 edition of the Handbook states, at page 446, that:

> Completion of high school is often the minimum educational requirement to become a blue-collar worker supervisor, but workers generally receive training in human resources, computer software, and management before they advance to these positions. Although many workers with high school diplomas still rise through the ranks, employers increasingly seek applicants with postsecondary technical degrees. In high-technology industries, such as aerospace and electronics, employers may require a bachelor's degree or technical school training.

The Handbook offers no support for the proposition that the proffered position requires a bachelor's degree.

II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).

Factors often considered by the Service when determining the industry standard include: whether the DOL's 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991).

The lack of any support from the Handbook for the proposition that the proffered position requires a degree was discussed in the previous section, and shall not be repeated here. Neither counsel nor the petitioner presented any evidence that any association of employees in parallel positions has instituted a degree requirement for membership.

As was noted above, counsel did submit a letter from the Director of the Automotive Service Association of Oregon. That letter stated that the proffered position, Director of the Automotive Division, requires a bachelor's degree or its equivalent, although it did not state in what specific field. The information upon which this conclusory statement was based is unknown to the Service. The writer did not state whether she had been apprized of the duties of the position or only the title. The writer did not state whether she was aware that the Director of the Automotive Division would manage one small shop of approximately six to ten employees. In fact, whether she knew anything about the petitioner's business or the proffered position is unclear. Under these circumstances, no weight can be accorded the conclusion.

Nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specialized field of study.

III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(a)(3).

The petitioner has not presented evidence that it normally requires a degree or its equivalent for the proffered position of manager of the automotive division or that it has ever filled the proffered position.

IV. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)4).

The record contains no indication that the duties of the proffered position are more complex than those of managing a typical automobile shop.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical

application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered position requires the attainment of a bachelor's degree in a specific specialty.

Finally, counsel notes on appeal that the Administrative Appeals Office has consistently held that market analyst positions are specialty occupations, and that some of the duties of the proffered position relate to marketing and sales. In a letter submitted in response to the Request for Evidence, the petitioner's president stated that the proffered position requires a bachelor's degree in business administration or the equivalent. The Service need not reach the issue of whether the proffered position qualifies as a market analyst position or requires a degree in business administration or the equivalent as the beneficiary does not hold a degree related to that field. The petitioner submitted evidence that the beneficiary's degree is the equivalent of a master's degree in mechanical engineering with a specialization in automotive engineering. If the proffered position were a specialty occupation requiring a degree in a field related to marketing or business administration, the beneficiary would not be qualified for the position.

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.