D2

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[redacted]

FILE: LIN 01 025 54022 OFFICE: NEBRASKA SERVICE CENTER DATE: JAN 14 2003

IN RE: Petitioner: [redacted]
Beneficiary:

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]

PUBLIC COPY

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 petition states that the petitioner is an automotive mechanical services firm with 15 employees and a gross annual income of $554,484, and that it seeks to employ the beneficiary as a mechanical engineer for two years.

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

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 beneficiary would be employed as a mechanical engineer, but provided no additional detail of the proffered position. The petitioner failed to provide some information requested on the petition, including its type of business. With the petition, the petitioner provided a copy of the beneficiary's diploma.

The director requested that the petitioner submit additional evidence pertinent to the proffered position. Specifically, the director requested that the petitioner complete the petition and provide copies of the beneficiary's transcripts with an English translation, as well as an English translation of the beneficiary's diploma. In addition, the director requested a more detailed statement of the duties of the proffered position.

In response, the petitioner submitted the completed petition, the requested transcripts, and the English translations requested by the director. In the petition, the petitioner described his business as an automotive mechanical services company. The petitioner stated that the beneficiary would draft new mechanical parts in accordance with specific design requirements 45% of the time, would prepare manuals for the manufacture of those parts 35% of the time, and would review and monitor production of those parts 20% of the time.

Subsequently, the director requested yet more evidence from the petitioner. Specifically, the director requested that the petitioner provide evidence to establish that the petitioner's business includes drafting new mechanical parts, preparing manuals, and producing or manufacturing those parts. In addition, the director requested that the petitioner state specifically what type of parts the company manufactures, in what quantity, and what machines the company has for manufacturing process.

As to the manuals which the beneficiary would prepare, the director asked whether those manuals would be for use in the petitioner's shop only, or whether they would be for sale and distribution to a larger market. If the manuals were for sale and distribution, the director requested that the petitioner submit evidence that the beneficiary's command of English is sufficient to prepare technical manuals for the larger market.

In response, the petitioner's president submitted a letter. In that letter, he stated that the principal business of the petitioner is to transport heavy machinery such as trucks and tractors. He further stated that the business requires certain modified and upgraded mechanical parts. Because those modified or upgraded parts are unavailable elsewhere, they must be fabricated. Those parts are not produced in large quantities, but only as needed by the petitioner's own business. The petitioner does not produce the parts, but orders them produced to specifications by outside companies.

The petitioner's president further stated that, because the manuals to be prepared by the beneficiary would be for the beneficiary's internal use only, no evidence pertinent to the beneficiary's command of English was required.

The director denied the petition, finding that the petitioner had failed to demonstrate that the proffered position is a specialty occupation.

On appeal, counsel states that the Service never requested evidence that the petitioner has ever drafted mechanical parts, or evidence that the beneficiary has sufficient command of English to prepare manuals, and that the Service did not explain how the beneficiary might demonstrate his command of English. Counsel further states that the beneficiary clearly has sufficient education and experience to fill the proffered position.

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.

Contrary to counsel's assertion on appeal, the Service did request that the petitioner submit evidence to establish that it drafts new mechanical parts. That request is contained in the Request for Evidence issued in this matter on May 4, 2001.

The petitioner has never presented a comprehensive account of its business operations or explained how the duties of the proffered position relate to the petitioner's business. On the petition, as amended, the petitioner's business is said to be automotive mechanical services and the proffered position is that of a mechanical engineer.

In the first Request for Evidence, the director asked what the beneficiary's duties would be. The petitioner replied that the beneficiary would draft new mechanical parts, prepare manuals for the manufacture of those parts, and would review and monitor production of those parts.

In the second Request for Evidence, the director requested evidence that the petitioner does, in fact, manufacture parts, and asked specifically what type of parts, the quantity, and what machinery the petitioner owns for the production of those parts. In response, the petitioner's president stated that the petitioner does not manufacture any parts at all, but orders them produced to specifications elsewhere. He further stated that the manuals which the beneficiary would produce for the production of those parts were for internal use at the petitioner's own business. In the denial letter, the director noted the obvious contradiction.

Counsel now argues both that the Service never asked for proof of the beneficiary's command of English and that the Service failed to specify how the beneficiary might demonstrate that command. In fact, in the Request for Evidence of May 4, 2001, the director requested that the petitioner provide evidence of the beneficiary's command of English if the manuals produced by the beneficiary were to be used outside the petitioner's own shop. The petitioner stated that the manuals, for the production of parts, were for use within the shop, but that the parts were to be produced elsewhere. Neither the petitioner nor counsel has sought to reconcile those contradictory statements or to otherwise clarify the issue of the nature of the petitioner's business and the nature of the beneficiary's proposed duties in that business.

In light of the failure of the petitioner and counsel to provide a coherent statement of the nature of the petitioner's business and the duties of the proffered position, the petitioner has failed to demonstrate that any position exists at his business for a mechanical engineer. As such, he has failed to demonstrate that the proffered position is a specialty occupation. Counsel's final assertion, that the evidence demonstrates that the beneficiary is qualified to hold the proffered position, is not salient to the basis of the director's decision.

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.