



U.S. Citizenship
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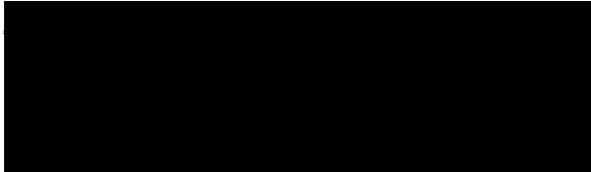
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FILE: SRC 04 082 50336 Office: TEXAS SERVICE CENTER Date: SEP 21 2005

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:



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.

Robert P. Wiemann, Director
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 dismissed. The petition will be denied.

The petitioner is a helicopter training academy and seeks to employ the beneficiary as its head of training. It endeavors 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of 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 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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.

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.

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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as its head of training. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Be responsible for the integration and management of flying and ground training for all European Joint Aviation Authority Pilots License and Rating Courses taught by the petitioner;
- Maintain flying and ground training standards achieved in the European Joint Aviation Commercial Pilot Training Program;
- Evaluate the performance of the training staff;
- Develop and implement the flying and ground training syllabi so that it meets the requirements of the joint aviation authority for flight crew licensing;
- Test and evaluate students' progress;
- Train instructors and standardize all helicopter training exercises in accordance with joint aviation authority requirements; and
- Act as the UK Civil Aviation authority authorized examiner for professional pilot licenses, flight instructor ratings, private pilot licenses, and aircraft type ratings.

The petitioner requires a minimum of a bachelor's degree for entry into the proffered position, but does not state that the degree need be in any particular educational discipline.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often

considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for aircraft pilots and related positions. The *Handbook* notes that pilots' duties vary, depending on the business that employs their services. As is the case herein, some pilots work as flight instructors. Training, licensing, and certification of pilots will vary, depending upon the specific duties of their particular employment. There is no requirement, however, that pilots obtain a baccalaureate or higher degree as the minimum requirement for entry into the profession. The *Handbook* notes that some small airlines will hire high school graduates, but most require at least two years of college, but prefer to hire college graduates. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted an opinion from Terry L. Radovich, President and CEO of TLR International Programs, and copies of seven job advertisements. [REDACTED] states that based on his education, training, and experience, the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Mr. Radovich notes that most flight training schools/colleges now require its directors, departmental heads, and flight instructors to have a minimum of a baccalaureate degree, but that the degree can be in any number of educational disciplines. As previously noted, however, 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. An occupation that requires a baccalaureate level education in any number of unrelated educational disciplines will not qualify as a specialty occupation. Further the job advertisements submitted by the petitioner for pilots/flight instructors do not establish that a degree in a specific specialty is required for the positions advertised. Of the seven job advertisements submitted, one states that a bachelor's degree in an unspecified discipline is preferred, but not required. One requires a bachelor's degree in aviation, education, safety or management. The remaining advertisements indicate that a degree is required, but do not state that the degree need be in any particular educational discipline. The petitioner also makes reference to the Department of Labor's employment website (America's Job Bank, CareerInfonet) to establish that a degree requirement is common to the industry for the proffered position. That cite, however, with reference to the education and training requirements for airline pilots, copilots and flight engineers, simply indicates that a bachelor's degree is typically required for those positions. It does not establish that a degree in a specific specialty is normally required to enter into those positions. The evidence submitted does not establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).