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FILE: SRC 04 084 52250 Office: TEXAS SERVICE CENTER Date: OCT 06 2008

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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

The petitioner is a helicopter training academy. It seeks to employ the beneficiary as a chief ground instructor, and 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, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first 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 chief ground instructor. Evidence of the beneficiary's duties includes the Form I-129 petition with attachments and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Maintain proper implementation of the ground Training syllabi as approved by the UK Civil Aviation Authority for Joint Aviation Authority Licenses and Ratings;
- Develop and update ground Training Syllabi;
- Maintain training standards of ground instructional staff to include the review of all training materials;
- Produce the content of school study guides with particular regard to currency and accuracy of information;
- Review student progress, initiating reports as appropriate and recommend remedial training for students not achieving satisfactory standards;
- Provide classroom instruction for the following Joint Aviation Authority License examination subjects to Airline Transport Pilot Level: European Aviation Law; Human Performance and Limitations; Aircraft instrumentation; Helicopter Controls, Rotors, and Transmissions; Piston and Gas Turbine Engines; Helicopter Systems; AC and DC Electrics; and Electronics and Computers;
- Be involved in long-term planning issues, course development, faculty recruitment, and accreditation compliance;
- Represent the school in ground training issues with the European Joint Aviation Authority (JAA) and the International Civil Aviation Authority (ICAO);

- Manage the allocation of resources, including faculty, classrooms, and training aids;

Provide quality assurance through monitoring and counseling of other instructors with the authority to hire or fire faculty members;

The petitioner requires a minimum of a bachelor's degree for entry into the proffered position, and finds the beneficiary qualified for the position by virtue of his degree from the Royal Air Force Apprenticeship in the United Kingdom.

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 [REDACTED] 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: [REDACTED] notes that most flight training schools/colleges now require their 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 [REDACTED] 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).

The petitioner does not assert that it normally requires a degree or its equivalent for the position, and offers no evidence in this regard. As such, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties detailed are routinely performed in the industry by individuals with less than a baccalaureate level education in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be determined is whether the beneficiary is qualified to perform the duties of the offered position. It has been determined that the offered position does not qualify as a specialty occupation, thus, there would be no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. Suffice it to say that the petitioner deems the beneficiary qualified to perform the duties of the position based upon his past education, training, and experience. That determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS. The petitioner did submit an opinion letter from [REDACTED], President and CEO of TLR International Programs who notes that the beneficiary holds a degree from the Royal Air Force Apprenticeship (3 years of academic and practical internship) in the United Kingdom, that he completed various courses related to his profession, and that he has over 35 years of experience in helicopter flight and training. [REDACTED] states that the beneficiary's education, training and experience afford him the proper background, necessary practical understanding, and unique tools for the position of Chief Ground Instructor. [REDACTED] does not state, however, that the beneficiary's education and training and experience is equivalent to a baccalaureate level education in a specific specialty from an accredited college or university in the United States. Thus, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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 and the appeal shall accordingly be dismissed.

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