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U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

File: LIN-00-104-50302 Office: Nebraska Service Center Date: 11 APR 2002

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 U.S.C. 1101(a)(15)(H)(i)(b)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

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 nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a flight training school for Boeing 727, 737, 757, 767, MD-11, DC-10, and L1011 Tristar aircraft. It has three employees and an approximate gross annual income of $250,000. It seeks to employ the beneficiary as a flight captain/chief pilot for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement and a credentials evaluation. Counsel had indicated that additional evidence would be submitted in support of the appeal on or before June 17, 2001. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

8 C.F.R. 214.2(h)(4)(ii) 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.

The director denied the petition because the duties described by the petitioner require skills obtained through training experience rather than the attainment of a baccalaureate degree. On appeal, counsel states, in part, that the duties of a chief pilot/flight captain/instructor are more complex that those of an entry-level pilot and therefore require a baccalaureate degree.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> Trains experienced Airline Pilots in policy and use of advanced equipment; gives pilots simulator and flight training in operation of commercial airlines (Boeing 727,

737, 757, 767, MD-11, DC-10, L1011 Tristar, CE-750); accompanies Airline Captains to test and review their proficiency: observes and evaluates pilot knowledge and skills; gives final certification to pilots to fly specific aircraft; compiles and issues reports and findings to FAA officials; pilots airplane for commercial purposes; directs operation of flight department; conducts training for pilots; reviews reports on pilot performance and forwards reports to the FAA; studies technical manuals to insure compliance with federal laws; directs preparation of flight-crew schedules and assignment of personnel; may interview and hire flight personnel.

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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's or higher degree in engineering management or a related field. The proffered position appears to be that of an aircraft pilot. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an aircraft pilot. Airline pilots must have an airline transport pilot's license. Applicants for this license must be at least 23 years old and have a minimum of 1500 hours of flying experience, including night and instrument flying, and must pass FAA written and flight examinations. Although counsel submits evidence on appeal that the beneficiary holds the equivalent of a master's degree in engineering management, in the

petitioner's undated cover letter, the minimum requirements for the proffered position are listed as follows: "Must have ICAO, ATP and U.S. ATP licenses, must have 12+ years experience (over 10,000 flight hours), type ratings for commercial size aircraft (Boeing 737, L1011, etc.)." It is noted that the record contains no evidence demonstrating that these minimum requirements are the equivalent of a baccalaureate degree, such as an evaluation from 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as engineering management, for the offered position. Third, although the record contains various Internet job advertisements such as that from Northwest Airlines, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.