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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC-01-060-52568 Office: California Service Center

Date: AUG 04 2002

IN RE: Petitioner:
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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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. Wienmann, 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 an avionics installation and repair business with five employees and a gross annual income of \$1,345,318.51. It seeks to employ the beneficiary as an avionics engineer 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 brief.

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 appeared to relate to the job of an aircraft mechanic, a position that, according to the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), is not a specialty occupation. On appeal, counsel states, in part, that the proffered duties, which include planning, modifying, constructing, and testing aircraft equipment, are those of an avionics engineer, not an aircraft mechanic. Counsel further states that the duties of the offered position are more sophisticated than the duties of an aircraft mechanic.

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:

Due to the continued growth of the company, we are in urgent need of an Avionics Engineer to inspect, test, adjust and repair avionics equipment installed in our aircraft. We require someone who will manage and perform modifications and repairs to single engine and twin

engine type aircraft. [The beneficiary] will be responsible for planning and representing the company's interests whilst at our maintenance facility.

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 degree in mechanical engineering technology or an equivalent thereof. The proffered position appears to be that of an aircraft and avionics equipment mechanic or service technician. At page 483 of its Handbook, 2002-2003 edition, the DOL describes the job of an aircraft and avionics equipment mechanic or service technician, in part, as follows:

Many aircraft mechanics, also called airframe, powerplant, and avionics aviation maintenance technicians, specialize in preventive maintenance. They inspect engines, landing gear, instruments, pressurized sections, accessories--brakes, valves, pumps, and air-conditioning systems, for example--and other parts of the aircraft, and do the necessary maintenance and replacement of parts . . .

Avionics technicians repair and maintain components used for aircraft navigation and radio communications, weather radar systems, and other instruments and computers that control flight, engine, and other primary functions . . . Technicians

may also be required to analyze and develop solutions to complex electronic problems.

A review of the DOL's Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an aircraft and avionics equipment mechanic or service technician. Although a few individuals become mechanics through on-the-job training, most learn their job in one of about 200 trade schools certified by the FAA. About one-third of such schools award 2 and 4-year degrees in avionics, aviation technology, or aviation maintenance management. Experienced aircraft mechanics may advance to lead mechanic (or crew chief), inspector, lead inspector, or shop supervisor positions. 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 mechanical engineering technology, for the offered position. Third, although the petitioner has submitted various Internet job listings, 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.

Beyond the decision of the director, the record does not contain any corroborating evidence to support the finding of the credentials evaluator, 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). As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.