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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: LIN-00-089-52682

Office: Nebraska Service Center

Date: 04 FEB 2002

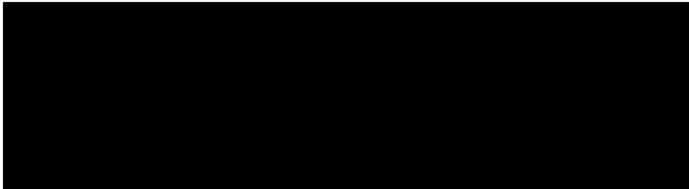
IN RE: Petitioner:

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 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 operates a flight training school and provides aircraft for rental, commercial, instrument and instructor pilot ratings. It has six employees and a gross annual income of \$356,166. It seeks to employ the beneficiary as an aircraft sales project technical representative 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 and service technician, occupations that do not require a baccalaureate degree. On appeal, counsel states, in part, that the proffered position relates to that of an engineer more than an aircraft mechanic or service technician. Counsel further states that aircraft mechanic duties are only a small portion of the beneficiary's proposed duties.

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:

- (1) Plan and coordinate activities involving inspection and repair of aircraft acquired from foreign as well as domestic sources;

(2) investigate the requirements for inclusion of said aircraft on the American registry with current certificates of airworthiness;

(3) translate aircraft records and documents for purposes of preparing time-line documentation from Spanish to English of aircraft histories and component status;

(4) analyze review and inspection findings to recommend and determine necessary repairs and/or corrective actions to make units usable for customers' intended use;

(5) coordinate operation, maintenance and repair activities to obtain optimum utilization of equipment; and

(6) communicate effectively in both English and Spanish for contacts with customers, equipment operators and mechanics.

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 or a related field. Counsel asserts that the Department of Labor has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT), Fourth Edition, 1977, standing alone, is not enough to establish that an

occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Occupational Outlook Handbook (Handbook). The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

Although counsel maintains that the proposed duties include such complex engineering duties as designing specific equipment to be installed on various aircraft, such duties were not reflected in the description of duties that was submitted at the filing of the instant petition, as listed above. Upon review of the record, the proffered position appears to be primarily that of an aircraft mechanic and a service technician. A review of the DOL's Handbook, 2000-2001 edition, at pages 379-380 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as an aircraft mechanic and service technician. The majority of mechanics who work on civilian aircraft are certificated by the FAA as "powerplant mechanic," "airframe mechanic," or "avionics repair specialist." Mechanics who additionally have an inspector's authorization can certify work completed by other mechanics and perform required inspections. Mechanics with certificates supervise those who are uncertified. 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, for the offered position. Third, 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 proposed Spanish translation duties have been noted. The petitioner, however, has not established that the beneficiary's duties as a translator are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the Spanish language or a less extensive education, is necessary for the successful completion of its duties.

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.