

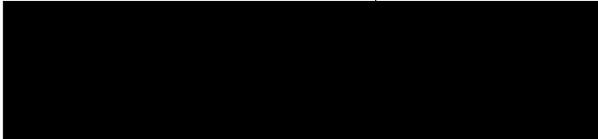


D2

U.S. Department of Justice
Immigration and Naturalization Service

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



JAN 22 2002

File: WAC 00 179 53540 Office: CALIFORNIA SERVICE CENTER

Date:

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, California Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm that manufactures lighter-than-air airships that has 200 employees and a gross income of \$2,000,000. It seeks to employ the beneficiary as an engineering/aviation test pilot for a period of three years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, the petitioner submits a brief.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the

position that indicates that the beneficiary will be responsible for, among other things, piloting an experimental prototype airship to evaluate its airworthiness, performance, system operation and design. He will test control operations, observe measuring and operating instruments and equipment during flight and on the ground under simulated conditions. In addition, he will be responsible for preparing reports of test results and analyzing test data and providing detailed instruction to other civil, mechanical and electronic engineers to assist them in modifying the equipment, structures, and drawings as needed. The petition is also supported by evidence that the beneficiary has a high school diploma and is a licensed commercial pilot.

The director determined the proffered position was that of an aircraft pilot and did not qualify as a specialty occupation.

On appeal, counsel for the petitioner argues that the position is actually that of an aeronautical test engineer and qualifies as a specialty occupation.

The record of proceeding has been carefully considered. The petitioner has not established that the proffered position qualifies as a specialty occupation. The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The record does not contain sufficient evidence establishing that a bachelor's or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, indicates that aeronautical engineers develop new technologies for use in aviation, defense systems, and space exploration, often specializing in areas like structural design, guidance, navigation and control, instrumentation and communication, or production methods.

While the duties of the proffered position appear to more involved than simply flying an airship, the duties of the position do not appear to be those of an aeronautical engineer. Instead the duties of the proffered position appear to be similar to those of an engineering technician. The Handbook indicates that engineering technicians are responsible for building or setting up equipment, preparing and conducting experiments, and calculating and recording the results. Technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development and their work is more limited in scope and more practically oriented than that of scientist or engineers. The Handbook provides that positions in this field are generally filled by individuals with at least a 2-year associate degree in engineering technology.

Based on the forgoing, it has not been shown that a baccalaureate

or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In addition, the record does not establish that it is common to the industry in parallel positions among similar firms to employ engineering technicians with bachelor's degrees. The petitioner has not submitted any evidence relating to the hiring practices of firms of similar size and scope. Further, 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 for the proffered position. While the record contains a statement that the petitioner employs a number of individuals with degrees in engineering, the record does not contain copies of the academic degrees or a description of the duties that they perform.

Finally, the record does not contain evidence establishing that the duties of the proffered position are so complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree.

In closing, assuming for the sake of argument that the proffered position qualifies as a specialty occupation, the record does not establish that the beneficiary has a bachelor's or higher degree or its equivalent in an academic specialty related to the occupation. The record merely establishes that the beneficiary is a high school graduate with a pilot's license.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.