



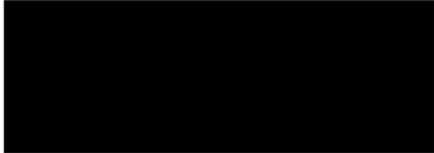
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U.S. Department of Justice

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: SRC-02-162-55018 Office: Texas Service Center

Date: OCT 23 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, Texas Service Center, and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is an airplane charter business with one employee and an approximate gross annual income of \$1.2 million. It seeks to employ the beneficiary as a commercial pilot for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and supporting documentation.

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.

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 to fully perform the occupation in such 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 determined that the petitioner had failed to establish that a baccalaureate degree in a specialized area is normally the minimum requirement for entry into the field or that the beneficiary's work experience is equivalent to a bachelor's degree in a specialized field of study.

On appeal, counsel argues that the proffered position requires the equivalent of a bachelor's degree. Counsel cites the holding

reached in Tapis International v. INS, 94 F. Supp.2d 172 (D. Ma. 2000) to support her argument.

The Service does not agree with counsel's argument that the proffered position requires a minimum of a baccalaureate degree in a specialized field of study. 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:

- a. Pilots airplane to transport passengers, mail or freight;
- b. Reviews papers to ascertain factors such as load weight, fuel supply, weather conditions and flight routes and schedules;
- c. Orders changes in fuel supply, load, route or schedule to ensure safety of flight;
- d. Reads gauges to verify that oil, hydraulic fluid, fuel quantities and cabin pressure are at prescribed levels prior to starting engines;
- e. Starts engines and taxies airplanes to runway;
- f. Sets brakes, and accelerates engines to verify operational readiness of components, such as super chargers, carburetor-heaters, and controls;
- g. Contacts control tower by radio prior to takeoff to obtain clearance and instructions;
- h. Releases brakes and movers [sic] throttles and hand and foot controls to take off and control airplane in flight;
- i. Pilots airplane to destination adhering to flight plane [sic] and regulations and procedures of federal government, company and airport; and
- j. Logs information such as time in flight, altitude flown, and fuel consumed.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

The Service does not agree with counsel's argument that the proffered position of commercial pilot would normally require a minimum of a baccalaureate degree in a specialized field of study. The Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at pages 563-564 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a commercial pilot. All commercial pilots who are paid to transport passengers or cargo must have a commercial pilot's license issued by the Federal Aviation Administration (FAA), and most business employers prefer applicants who have experience in the type of craft they will be flying. The Armed Forces have always been an important source of trained pilots for civilian jobs. Persons without armed forces training also become pilots by attending flight schools. The FAA has certified about 600 civilian flying schools, including some colleges and universities that offer degree credit for pilot training.

The Handbook notes the following:

Although some small airlines hire high school graduates, most airlines requires at least two years of college and prefer to hire college graduates. In fact, most entrants to this occupation have a college degree.

There is no indication, however, that such employers seek college graduates with a degree in aviation science or a related field for positions as commercial pilots. Thus, the petitioner has not shown that a baccalaureate degree in a specialized area or its equivalent is the minimum requirement for entry into the occupation.

Counsel argues that the proffered position is a specialty occupation in that it requires the services of a pilot with experience equivalent to a baccalaureate degree in a specialized area. Counsel asserts that the holding reached in Tapis International v. INS, 94 F. Supp.2d 172 (D. Ma. 2000) dictates such an outcome in this particular case. The proffered position at issue in the cited case was that of the showroom manager of an interior design firm, an occupation for which no specific bachelor's degree is offered at American colleges and universities. The court reasoned that a petitioner may show that the proffered position requires a bachelor's degree or its equivalent in fields where no specifically tailored baccalaureate program exists. However, there are colleges and universities in the United States which offer a bachelor's degree in aviation science. Therefore, counsel's argument cannot be considered to have merit.

Counsel asserts that the requirement of a bachelor's degree or 12 years of equivalent experience is standard for commercial pilot positions at similar businesses in the South Florida area because this is the requirement imposed by aviation insurers. In support of her assertion, counsel submits a letter dated June 7, 2002, from Jack Harrison, an official of Falcon Insurance Agency Inc. Mr. Falcon states, "[a]lthough underwriters occasionally make exceptions to these very stringent pilot experience requirements, in no case will underwriters approve pilots who do not have at least several years of experience flying sophisticated multi-engine aircraft and are simulator trained."

Counsel implies that the requirement of several years of flight experience is equivalent to the requirement of a bachelor's degree in a specialized area using the formula for determining the educational equivalence of a beneficiary's training and/or work experience as set forth at 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Specifically, the regulations state that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the beneficiary of an H-1B petition lacks. However, Mr. Harrison does not specify the number of years of flight experience his company requires commercial charter pilots to have for insurance purposes. Therefore, this letter does not support counsel's argument. Furthermore, the requirement of a specific number of years of work experience for a particular job does not, in and of itself, qualify that job as a specialty occupation.

Counsel also submits two letters from officials of other small commercial airplane charter businesses. Captain Kip Zimmer, General Manager of IJ Personal Jet, states that pilots holding the ratings necessary for a position as a commercial pilot should possess a bachelor's degree or the equivalent work experience to adequately perform the duties and responsibilities associated with such a position. Mr. Zimmer further states, "[i]n most cases experience alone will suffice the requirements being that usually insurance coverage is the governing priority and that is derived from hours flown in make and model of aircrafts [sic]." Clearly, the ability to perform the duties of a commercial pilot is directly correlated to accumulated flying experience with particular types of aircraft rather than to any degree requirement.

While Bob Merson of Trans Pico Inc. states that his company hires only pilots with either 12 years of flying experience and/or a bachelor's degree from an accredited college, the record does not contain any documentation to corroborate this statement. Furthermore, neither of these individuals states that a baccalaureate degree in a specialized field of study is usually required for employment as a pilot in the South Florida area.

The petitioner's president, Mark Ginsburg, states in a letter dated May 15, 2002, that his company hires only pilots with a bachelor's degree or the equivalent in flight experience. Mr. Ginsburg further states that his company employs one other commercial pilot who has over 20 years of flight experience. However, Mr. Ginsburg does not state, or provide any evidence to show, that the other pilot has a bachelor's degree in aviation science or a related field or that his company requires a bachelor's degree in a specialized area as part of the hiring process. Furthermore, neither counsel nor the petitioner has submitted any evidence to show that 12 years of flight experience are equivalent to a baccalaureate degree in aviation science or a related field. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the petitioner has not shown that it normally requires a bachelor's degree in a specialized area or its equivalent for the proffered position of commercial pilot.

Finally, the petitioner has not submitted any evidence to show that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specialized field of study. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate in the Handbook that a bachelor's degree in a specialized area such as aviation science is the minimum requirement for positions as commercial pilots. In view of the foregoing, it is concluded that the petitioner has not demonstrated

that the offered position is a specialty occupation within the meaning of the regulations.

The second matter to be determined is whether the beneficiary qualifies to perform services in a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary was awarded a bachelor's degree in business administration from the Universidad Autonoma [REDACTED] in Santa Cruz, Bolivia. The beneficiary's bachelor's degree was not considered by the credentials evaluator in his evaluation because a degree in business administration is not related to the duties of a commercial pilot.

The record further shows that the beneficiary had 13 years of experience as a pilot as of the filing date of the petition. The petitioner has submitted employment certificates from the beneficiary's former employers to document his work experience. The evaluator found the beneficiary's work experience equivalent to a bachelor's degree in airline piloting and navigation from an accredited college or university in the United States. The evaluator relied on the beneficiary's experience certificates, his United States pilot licenses, and college catalogs in arriving at such finding.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988). In this case, the evaluator has not stated, or provided any evidence to show, that she is 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. Therefore, the evaluation is accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation in a foreign country. The beneficiary's United States pilot licenses authorize him to work as a commercial pilot, but they do not authorize him to practice a specialty occupation since the occupation of commercial pilot is not a specialty occupation within the meaning of the regulations. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies to perform services in a specialty occupation.

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 dismiss.