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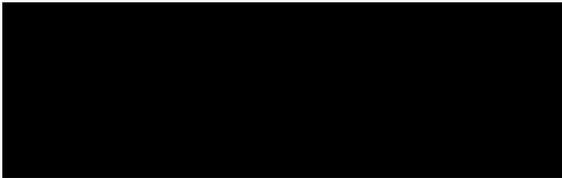
DZ

FILE: SRC 03 061 51685 Office: TEXAS SERVICE CENTER Date: APR 27 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

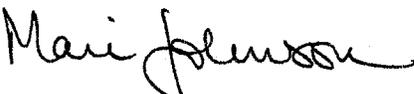
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is engaged in the aviation instructor/materials business. In order to employ the beneficiary as a aviation mechanic engineer, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a) (15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a Form I-290B annotated with the following comments about the reasons for the appeal:

Whether or not the request[ed] position of petitioner is a specialty occupation?

The positions described in DOT [the Department of Labor's *Dictionary of Occupational Titles (DOT)*] 638.281-014 Maintenance Mechanic or DOT 621.261-022 Experimental Aircraft Mechanic, requiring an SVP of 7 that demands 2 years and up to [sic] 4 years of specific vocational preparation do not describe and reflect in its entirety the position for which [the] petitioner is requesting [the beneficiary].

The job description made by Mr. Ron Henderson[,] the Director of [the petitioner] goes beyond the job description of DOT 638.281-014 and DOT 621.261-022[,] which means that an SVP of 7 is not enough requires [sic] an SVP of 8.

The Form I-290B also indicated that a brief and/or additional evidence would be filed within 30 days. To date, no additional documentation has been submitted into the record, however. The record is deemed complete as presently constituted.

It would appear that counsel is asserting that the director did not adequately weigh the duties of the proffered position, and that the *DOT* indicates that they require an SVP of 8. The petitioner describes the proposed job duties as follows:

Repairs & maintains in accordance with diagrams, sketches, operation manuals & manufacturer's specifications mechanical equipment such as engines, motors, etc. [O]bserves mechanical devices in operation and listen[s] to their sounds to locate [the] cause of trouble. Repair[s] and replace[s] defective parts. Start[s] devices to test performance, lubricate[s] and clean[s] parts.

In reaching its decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel.

The director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R.

§ 214.2(h)(4)(iii)(A). 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

Counsel's references to SVP ratings in the *DOT* have no persuasive effect, as SVP ratings do not specify whether a particular occupation requires a baccalaureate or higher degree in a specific specialty related to a particular occupation. Furthermore, the evidence of record does not establish that the proffered position requires such educational credentials.

The director's decision accurately assessed that the duties of the proffered position comports with the occupation of aircraft and avionics equipment mechanics and service technicians as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. As the director correctly noted, the *Handbook* states that the majority of these aviation workers learn their job at one of approximately 200 trade schools certified by the Federal Aviation Administration.

As this *Handbook* information conclusively establishes that the proffered position is not one that normally requires a baccalaureate or higher degree equivalent in any specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is not met.

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

There is no evidence to satisfy the first prong by establishing that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

As just discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

Also, the evidence of record does not qualify the proffered position under the second prong, which provides that "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." The occupational and educational information in the *Handbook* about aircraft and avionics equipment mechanics and service technicians fully encompasses all aspects of the proffered position, and this information indicates that trade school courses are sufficient to equip a person with the particular knowledge needed for the proffered position.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not a factor in this proceeding, as the petitioner provided no evidence on this criterion.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record indicates no more complexity or specialization in the proposed duties than the *Handbook* describes for those of aircraft and avionics equipment mechanics and service technicians. Accordingly, the *Handbook* conclusively establishes that the knowledge required for the proposed duties is usually associated with the completion of trade school courses, and not with the attainment of a baccalaureate or higher degree in any specific specialty.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.