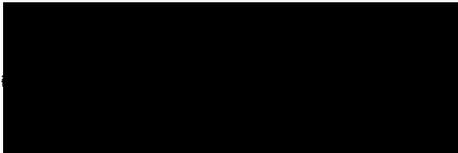




U.S. Citizenship
and Immigration
Services

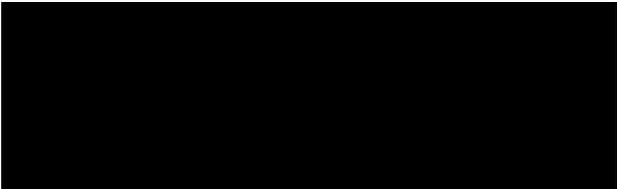


FILE: SRC 03 215 53149 Office: TEXAS SERVICE CENTER Date: **AUG 12 2011**

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

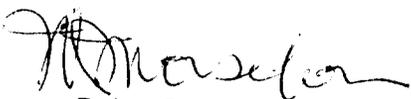
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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

APPEALS OFFICE

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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 an aircraft maintenance facility that seeks to employ the beneficiary as an aircraft technician. The petitioner endeavors to classify the beneficiary 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 on the basis that the proffered position did not meet the definition of a specialty occupation.

Counsel submitted a timely Form I-290B on October 23, 2003 and indicated that a brief and/or additional evidence was being submitted to the AAO at that time. No documentation was submitted in support of the Form I-290. Further, as of this date, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an aircraft technician. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: maintaining regulatory and maintenance libraries and reports; updating safety manuals and other sources; interpreting manuals and service bulletins; and examining aircraft engines and turbines for problems and defects and repairing or replacing the defective or damaged parts. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in aircraft maintenance.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of aviation mechanic was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the *Handbook* should not be considered the only source for guidance on whether a job is a specialty occupation. According to counsel, the Department of Labor's *O*Net* provides a more accurate categorization for the instant position, and counsel asserts that the *O*Net* indicates that a degree is required to enter into the position, which is the criterion for establishing a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As counsel points out, the *Handbook* is not the sole source for such information, but it is more specific than the *O*Net* in terms of degree requirements. Job Zone categories in the *O*Net* do not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. Job Zone categories indicate only the total number of years of vocational preparation required for a particular position. They do not describe how those years are to be divided among training, formal education, and experience, nor do they specify the particular type of degree, if any, that a position would require. The *O*Net* is, thus, not the most specific source of information regarding educational requirements. As noted by the director, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an aircraft mechanic job.

The petitioner submitted no evidence regarding parallel positions in the petitioner's industry or any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position.

Finally, the AAO turns to 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, 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.

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