

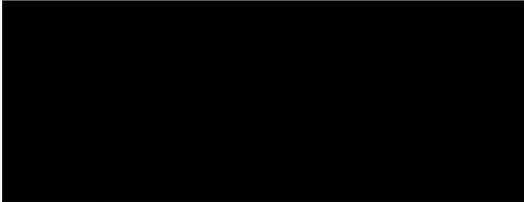
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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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Services

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*DA*

DEC 02 2004

FILE: SRC 03 249 54533 Office: TEXAS 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center 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 sells aircraft and provides aircraft instructional training. It seeks to employ the beneficiary as an aviation flight instructional manager. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional and previously submitted evidence.

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 aviation flight instructional manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing curriculums and teaching instructional techniques to flight instructors; planning and implementing educational programs that develop teaching techniques; developing national and international market training programs for instructors; and coordinating and training instructors who will instruct clients in the United States and overseas. The document entitled "Job Description, Aviation Flight Instructional Manager" indicated that a candidate for the proffered position must possess a bachelor's degree or have 15 years of experience in the airline or an associated industry and have instructional experience.

The director determined that the proffered position was not a specialty occupation. According to the director, the submitted evidence did not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into an aviation flight instructional manager job. Nor did the director find that a bachelor's degree is common to the industry in parallel positions among similar organizations or that the position was so complex or unique that it can be performed only by a person with a degree. The director explained that the petitioner's creation of a position with a perfunctory bachelor's degree requirement would not mask the fact that the position is not a specialty occupation. Finally, the director stated that the petitioner must demonstrate that the position requires a precise and specific course of study that relates directly and closely to the position in question.

On appeal, counsel states that the occupation of aviation flight instructional manager is a specialty occupation. Counsel points to the submitted opinion letter from [REDACTED] Director of Career Services at Embry-Riddle Aeronautical University, Arizona, which concluded that the occupation of aviation flight instructional manager typically requires a bachelor's degree or higher in aviation business administration or a related degree and experience. Counsel also refers to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) to state that an instructional coordinator performs duties similar to those of the proffered position, and that *Occupational Information Network (O\*Net)* states that the minimum educational requirement for instructional coordinators is a bachelor's degree, usually in education. The petitioner's letter dated November 17, 2003 declared that [REDACTED] conveyed by e-mail that all college or instructional positions involving training programs require that management staff in flight training possess a degree, and that most flight organizations, including airlines, flight training schools, and the military, require managers of flight training programs to possess a baccalaureate degree. The petitioner claims to have contacted two flight organizations that will provide statements confirming they require a bachelor's degree for instructional flight managers.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. Factors often considered by CIS when determining these criteria 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 previously mentioned, 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. In the document entitled "Job Description, Aviation Flight Instructional Manager," the petitioner indicated that a candidate for the proffered position must possess a bachelor's degree or have 15 years of experience in the airline or an associated industry and instructional experience. The petitioner does require a bachelor's degree, but it does not require that it be in a specific specialty. Consequently, the petitioner cannot establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position, aviation flight instructional manager.

The petitioner stated that a candidate may have 15 years of experience in the airline or an associated industry and instructional experience. The AAO notes that when determining whether a position qualifies as a specialty occupation, educational equivalency is considered by CIS only when a specific degree does not exist in an occupational field. *Tapis Int'l v. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). Because there are degree programs for the occupational field of flight instructors, the AAO will not consider in this proceeding the petitioner's requirement of 15 years of experience in the airline or an associated industry and instructional experience.

The AAO observes that the petitioner's September 10, 2003 letter stated that the proffered position required at least 10 years of experience in the airline or an associated industry and management and instructional experience. This is inconsistent with the requirement of 15 years of experience as set forth in the document entitled "Job Description, Aviation Flight Instructional Manager." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Given that the petitioner does not require a bachelor's degree in a specific specialty for the proffered position, it cannot establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the

position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show that the nature of the specific 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 in a specific specialty. Again, the petitioner did not require that a candidate possess a bachelor's degree in a specific specialty.

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.