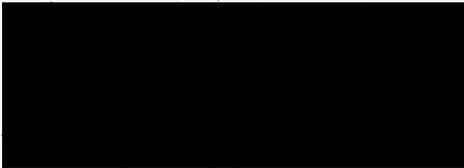




U.S. Citizenship
and Immigration
Services



FILE: WAC 03 232 53618 Office: CALIFORNIA SERVICE CENTER Date: **OCT 27 2004**

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:

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, Director
Administrative Appeals Office

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

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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 is a commercial helicopter operator. In order to employ the beneficiary as a helicopter mechanic, 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 petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).¹ At section 3 of the Form I-290B (Notice of Appeal), the petitioner asserts that Citizenship and Immigration Services (CIS) does not understand the helicopter industry and “how important it is to have qualified and certified mechanics to perform maintenance on our helicopters.” To support the appeal, the petitioner submits the following documents with the Form I-290B: a four-page letter from the petitioner’s director of maintenance; a document signed by the beneficiary and the petitioner’s director of maintenance to acknowledge an employment contract between the petitioner and the beneficiary; annotated with handwritten notes, a copy of the director’s decision that is the subject of this appeal, which is; various documents related to the beneficiary’s training, experience, and Federal Aviation Administration licensure as an aviation mechanic; and excerpts of relevant sections of the petitioner’s contract with the U.S. Department of Agriculture – Forest Service.

Upon consideration of the totality of the record of this proceeding, including all of the aforementioned appellate documents, the AAO finds that the director’s decision was correct and supported by the evidence of record.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

¹ This decision was rendered on the reopening of the proceeding after an earlier, August 28, 2003 decision that misidentified the beneficiary.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.” (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The evidence of record clearly establishes that while performance of the proffered position requires extensive training and experience in aviation mechanics, it does not require at least a bachelor’s degree, or its equivalent, in a specific specialty. Also, the Department of Labor’s *Occupational Outlook Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations, indicates that most aviation mechanics learn their job not through college courses leading to a bachelor’s degree, but through either two-year or four-year degree programs at FAA-certified trade schools. The petitioner asserts that it normally requires a high school degree or its equivalent, and an Airframe and Power Plant (A&P) certificate license. As indicated in the statute and regulations, a baccalaureate degree or its equivalent must be the minimum requirement for entry into the occupation. The petitioner has established none of the regulatory criteria. Consequently, the petitioner has not established that the proffered position is a specialty occupation as that term is used in Section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, there is no basis for disturbing the director’s decision to deny the petition.

Beyond the decision of the director, it is noted that the evidence of record about the beneficiary's education, training, and experience does not establish that the beneficiary is qualified to perform service in a specialty occupation. That is, the evidence does not establish that the beneficiary possesses at least a U.S. bachelor's degree, or the equivalent, in a specific specialty closely related to a proffered specialty occupation position, as required by section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), and the related CIS regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). For this reason also the petition must be denied.

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 appeal will be dismissed.

ORDER: The appeal is dismissed. The petition is denied.