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FILE: SRC 04 085 52443 Office: TEXAS SERVICE CENTER Date: **SEP 21 2005**

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:

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 is a helicopter training academy that seeks to employ the beneficiary as a director of flight training. 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 on the ground that 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 a director of flight training. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 ensuring that day-to-day flight standards and procedures, flight instructor training, and standardization in helicopter flight training exercises follow joint aviation authority flight crew licensing requirements; conducting progress testing of students; assessing students that have unsatisfactory progress and recommending remedial programs for them; liaising with air traffic control regarding traffic procedures and operating areas, and with relevant parties about noise abatement; and ensuring safe and expedient operation of helicopters. The petitioner requires a bachelor's degree or its equivalent in flight training education for the proposed position.

According to the director, the submitted evidence did not any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director discussed the qualifications of a pilot, as described in the Department of Labor's (DOL) *Occupational Outlook Handbook Handbook* (the *Handbook*). The director stated that a bachelor's degree or its equivalent is not required for the proposed position.

On appeal, counsel asserts that a supplemental letter from the petitioner and the report from TLR Specialties confirm that the proposed position qualifies as a specialty occupation. Counsel states that the director only considered the position of a pilot as described in the *Handbook*, overlooking that the proposed position is not simply a pilot: it is the head of training. Counsel asserts that the director referenced the *Handbook's* information about pilots, which reports that most entrants to this occupation have a college degree and that many employers are making a college degree an educational requirement. According to counsel, the *Handbook* shows that a pilot is an occupation "in transition," requiring a bachelor's degree; and information from the Bureau of Labor Statistics (BLS) substantiates this. Counsel refers to the *Career Guide for Industries (CGI)*, America's Job Bank, CareerInfonet, and the DOL's website to show that the proposed position is a specialty occupation. Counsel points to the TLR International Programs evaluation and Internet job postings to demonstrate that a bachelor's degree has come to be the industry norm for a director of flight training and similar occupations. Counsel contends that the petitioner is the only helicopter school in the world authorized to provide European training outside of Europe, and that offers students a combined JAA/FAA course. Counsel states that the general JAA training differs from requirements for the U.S. ratings; and that only certified flight instructors holding European and U.S. certification guide and train students. Counsel discusses the petitioner's management staff and the proposed duties. According to counsel, the school's accrediting agency, the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCCT), reviews the credentials of senior management staff. Counsel states that ACCSCCT would look unfavorably if the petitioner employed a person that did not possess a bachelor's degree as a director of flight training. Counsel states that the chief flight instructors at Flight Safety International and Embry Riddle Aeronautical University possess a bachelor's degree. According to counsel, the proposed position involves extensive management type responsibilities, and is more than a "pilot" or a "flight instructor." Counsel

maintains that by comparing the petitioner to an airline school the director overlooked the petitioner's uniqueness.

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 proposed position fails to qualify as a specialty occupation.

The AAO first turns 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. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the proposed position is more than a pilot, as it is the head of training; that the *Handbook* shows that a pilot is an occupation "in transition," requiring a bachelor's degree; and that information from the BLS, the *CGI*, America's Job Bank, CareerInfonet, and the DOL's website shows that the proposed position is a specialty occupation.

The AAO finds that the evidence is not persuasive in establishing that the proposed position is a specialty occupation. The *Handbook* discloses that the proposed duties reflect those of a flight instructor, and the AAO sets forth here the *Handbook* text:

Some pilots are instructors. They teach their students the principles of flight in ground-school classes and demonstrate how to operate aircraft in dual-controlled planes and helicopters. A few specially trained pilots are "examiners" or "check pilots." They periodically fly with other pilots or pilot's license applicants to make sure that they are proficient.

The *Handbook* conveys the following educational requirements of pilots and flight instructors:

All pilots who are paid to transport passengers or cargo must have a commercial pilot's license with an instrument rating issued by the FAA. Helicopter pilots must hold a commercial pilot's certificate with a helicopter rating. To qualify for these licenses,

applicants must be at least 18 years old and have at least 250 hours of flight experience. The experience required can be reduced through participation in certain flight school curricula approved by the FAA. Applicants also must pass a strict physical examination to make sure that they are in good health and have 20/20 vision with or without glasses, good hearing, and no physical handicaps that could impair their performance. They must pass a written test that includes questions on the principles of safe flight, navigation techniques, and FAA regulations, and must demonstrate their flying ability to FAA or designated examiners.

...

The U.S. Armed Forces have always been an important source of trained pilots for civilian jobs. Military pilots gain valuable experience on jet aircraft and helicopters, and persons with this experience usually are preferred for civilian pilot jobs. This primarily reflects the extensive flying time military pilots receive. Persons without Armed Forces training may become pilots by attending flight schools or by taking lessons from individual FAA-certified flight instructors. . . .

Although some small airlines will hire high school graduates, most airlines require at least 2 years of college and prefer to hire college graduates. In fact, most entrants to this occupation have a college degree. Because the number of college educated applicants continues to increase, many employers are making a college degree an educational requirement.

The *Handbook* continues:

Advancement for all pilots usually is limited to other flying jobs. Many pilots start as flight instructors, building up their flying hours while they earn money teaching. As they become more experienced, these pilots occasionally fly charter planes or perhaps get jobs with small air transportation firms, such as air-taxi companies. Some advance to flying corporate planes. A small number get flight engineer jobs with the airlines.

The *Handbook* reports that certification and experience or two years of college are acceptable for entry into a position as a pilot or a flight instructor; thus, a bachelor's degree is not required for these occupations. The *Handbook* does not suggest that a flight instructor, which corresponds to the proposed position, is a transitional occupation requiring a bachelor's degree.

The document from American's CareerInfoNet does not convey that a bachelor's degree *in a specific specialty*, such as flight training education, is required for an airline pilot, copilot, and flight engineer; and the AAO notes that the document does not discuss the occupation of a flight instructor. Both the *Handbook* and the document entitled "Air Transportation" convey that employers do not require a bachelor's degree in a specific specialty for a flight instructor. CGI's information about pilots mirrors that of the *Handbook*, conveying that a bachelor's degree is not required for a pilot; CGI does not discuss flight instructors. CGI relays:

Pilots must have a commercial pilot's license with an instrument rating, and must be certified to fly the types of aircraft that their employer operates. For example, helicopter pilots must hold a commercial pilot's certificate with a helicopter rating. Pilots receive their flight training from the military or from civilian flying schools. . . . In addition, airlines generally require 2 years of college and increasingly prefer or require a 4-year college degree. Pilots who work for smaller airlines may advance to flying for larger companies. They also can advance from flight engineer to copilot to captain and, by becoming certified, to fly larger planes.

Although counsel refers to the DOL's website and America's Job Bank to show that a flight instructor is a specialty occupation, counsel does not indicate where to find this on the DOL web page, and also does not specifically cite America's Job Bank. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For the reasons set forth above, the petitioner fails to 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.

No evidence in the record supports counsel's statement that ACCSCT would look unfavorably upon the petitioner if it employed a person that did not possess a bachelor's degree as a director of flight training. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Equally important, counsel does not assert that the ACCSCT has established that a bachelor's degree is required for the proposed position.

The evidence from TLR International Programs and the BLS is submitted to establish that the proposed position requires a bachelor's degree in flight training education. The letter from Mr. [REDACTED] of TLR International Programs states that most flight training schools/colleges and businesses now require directors and flight instructors to have at least a baccalaureate degree in a discipline such as economics, finance, accounting, and/or international business; in addition to requiring flight credentials, and instruction certification; or they require similar experience and certification.

This evidence is not persuasive, however. Mr. [REDACTED] fails to explain the connection between the field of business and the proposed position. To qualify as a specialty occupation, the Act and regulations require that the baccalaureate degree be in a specific specialty that is directly related to the proposed position. Mr. [REDACTED] does not cite to or provide evidence to support his opinion about the educational requirements of directors and flight instructors. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nor

does Mr. ████████ confirm that a bachelor's degree in flight training, which is the petitioner's educational requirement, is required for the proposed position.

The first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The submitted job postings fail to establish this criterion. The employers in the postings either differ in nature from the petitioner, a helicopter training academy with 45 employees and \$6,000,000 in revenue; or the nature of the employers is not disclosed; or the employers do not require a bachelor's degree in a specific specialty. Engineering Support Personnel provides simulation and training support for the aerospace industry and the Department of Defense; Lockheed Martin is a publicly-traded corporation; Rocky Mountain College and Central Missouri State University are large educational institutions; and the documents from CareerBuilder (one posting seeks a teacher and the other seeks a Chief and or QAR) do not describe the employer. OK3 Air and Aerospace University of North Dakota do not require a bachelor's degree in a specific specialty. For these reasons, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO notes that although counsel claims that the chief flight instructors at Flight Safety International and Embry Riddle Aeronautical University possess a bachelor's degree, no evidence in the record substantiates this. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Counsel asserts that the petitioner is the only helicopter school in the world that is authorized to provide European training outside of Europe, and that offers students a combined JAA/FAA course. Counsel claims that by comparing the petitioner to an airline school the director overlooked the petitioner's uniqueness. According to counsel, the proposed position involves extensive management type responsibilities, and is more than a "pilot" or a "flight instructor."

As discussed earlier, the *Handbook* reveals that the proposed duties parallel those of a flight instructor, which is an occupation that does not require a bachelor's degree in flight training education. Although the proposed position has some administrative duties and involves training in the JAA, no evidence reveals that the proposed duties and JAA training are so complex or unique as to require the director of flight training to have a baccalaureate degree in flight training education. The petitioner therefore fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually

associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed already, the *Handbook* discloses that the proposed duties parallel those of a flight instructor, which is an occupation that does not require a bachelor's degree in a specific specialty. Even though the proposed position involves providing JAA training, there is no evidence that shows that this requires specialized and complex knowledge that is beyond that of an FAA course taught by flight instructors in the United States. Consequently, the petitioner fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.