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U.S. Citizenship  
and Immigration  
Services

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FILE: SRC 05 067 51636 Office: TEXAS SERVICE CENTER Date: **AUG 15 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 sustained. The petition will be approved.

The petitioner is a flight school that is affiliated with, and was formed by, the Florida Institute of Technology. It seeks to employ the beneficiary as a flight instructor. 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 stating that the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

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), provides, in part, for the classification of qualified nonimmigrant 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a flight instructor. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would instruct student pilots in flight procedures and techniques as well as accompany them on training flights. The record reflects that the petitioner is affiliated with, and was formed by, the Florida Institute of Technology for the sole purpose of engaging in aircraft rental, aircraft charter, flight instruction and land-based flight operations including aircraft refueling and aircraft maintenance. The record also reflects that in addition to the aforementioned duties, the beneficiary will work as an adjunct professor at the Florida Institute of Technology teaching such college-level courses as Instructional Techniques, Aeronautics 1, Aeronautics 2, and Aeronautics 3.

The petitioner requires a minimum of a bachelor’s degree in Aeronautical Science for entry into the proffered position.

The petitioner has established that the proffered position qualifies as a specialty occupation. Positions as pilots and/or flight instructors do not generally qualify as specialty occupations because entry into those professions is not normally associated with the attainment of a bachelor’s or higher degree in a specific specialty. In this particular instance, however, the petitioner is an affiliate of the Florida Institute of Technology and a portion of the beneficiary’s job responsibilities include working as an adjunct professor with that institution teaching college level courses to students taking aviation related classes. The duties of the proffered position are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in Aeronautical Science or a related field since the beneficiary will be teaching college level courses in that area. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be determined is whether the petitioner is qualified to perform the duties of the offered position. The director did not comment on this issue as the petition was denied on another ground. The record, however, is sufficient for the AAO to make that determination. The petitioner has a bachelor’s degree in Aeronautical Science from the Florida Institute of Technology. That degree is closely related to the duties

of the proffered position, and qualifies the beneficiary to perform the duties of the position. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

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 sustained that burden and the appeal shall accordingly be sustained.

**ORDER:** The appeal is sustained. The petition is approved.