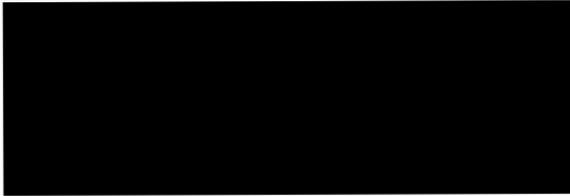




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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FILE: EAC 04 149 50058 Office: VERMONT SERVICE CENTER Date: **APR 05 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 operates a helicopter service. It seeks to hire the beneficiary as a commercial pilot and mechanic. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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:

An 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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a commercial pilot and mechanic. Evidence of the beneficiary’s duties includes: the Form I-129; a letter of support from the petitioner; and counsel’s response to the director’s request for evidence. According to this evidence, the beneficiary would perform duties that entail patrolling power lines for nine different utilities throughout New England; performing aerial applications of economic poisons for crop control; airlifting supplies to various customer remote locations and performing air carrier duties as an airline pilot; performing additional duties such as inspecting and reporting on aircraft; directing all scheduled maintenance of all helicopters; reading complex blueprints; being familiar with all updates and releases from manufacturers so that maintenance performed is within FAA regulations; performing all major and minor inspections; developing inspection programs; submitting inspection programs to the FAA; assisting, supervising and directing all personnel assigned to the repair station; performing the final acceptance of all incoming materials, including new parts, supplies and airworthiness of articles on which work has been performed outside the repair station; and conducting the preliminary, hidden damage, in progress and final inspection of all articles processed by the repair station and recording results. The petitioner stated that the beneficiary is qualified for the position because of his bachelor’s degree in professional aeronautics.

The director requested a more detailed job description which the petitioner provided. The director found that no evidence had been submitted indicating that the industry requires a bachelor’s degree or that it is normally the minimum requirement for the position of a commercial pilot/mechanic. The director found that the evidence of record does not establish that the job offered qualifies as a “specialty occupation.”

On appeal, counsel submits two letters in support of his assertion that the proffered position is a specialty occupation. On the Form I-1290B counsel states that it is inconceivable that this position with duties that include training, supervising, and interpretation of federal regulations, does not require a bachelor’s degree or the equivalent.

A thorough review of the *Handbook* discloses that the duties of the proffered position most closely resemble the duties of a pilot and an aircraft and avionics equipment mechanic and service technician as defined in the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*), occupations which do not normally

require a baccalaureate level of study. The *Handbook's* description of training, other qualifications and advancement for pilots indicates:

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.

As noted above, the *Handbook* indicates that most entrants to the occupation of pilot have a college degree and many employers are making a college degree an educational requirement. A degree in a specialty is not listed as a preference.

Furthermore, the *Handbook's* description of training, other qualifications and advancement for aircraft and avionics equipment mechanic and service technicians indicates:

Most mechanics who work on civilian aircraft are certified by the FAA as an "airframe mechanic" or a "powerplant mechanic." Mechanics who also have an inspector's authorization can certify work completed by other mechanics and perform required inspections. Uncertified mechanics are supervised by those with certificates.

The FAA requires at least 18 months of work experience for an airframe or powerplant certificate. For a combined A&P certificate, at least 30 months of experience working with both engines and airframes is required. Completion of a program at an FAA-certified mechanic school can substitute for the work experience requirement. Applicants for all certificates also must pass written and oral tests and demonstrate that they can do the work authorized by the certificate. To obtain an inspector's authorization, a mechanic must have held an A&P certificate for at least 3 years, with 24 months of hands on experience. Most airlines require that mechanics have a high school diploma and an A&P certificate.

As stated above, the *Handbook* does not indicate that a baccalaureate degree is an educational requirement into the occupations of aircraft and avionics equipment mechanics and service technicians.

Counsel relies on two letters submitted on appeal in support of his assertion that the proffered position requires a baccalaureate degree in a specific specialty. The first letter is from a professor and Aviation Technology program director, at the New Hampshire Community Technical College, Nashua, N.H.¹ The author states that based upon the education, training and experience for the dual capacity position of commercial pilot and mechanic, it is the author's position that a baccalaureate degree is required. The author notes that the position requires the analysis of training manuals, the instruction to others as to current FAA regulation, equipment requirements from the FAA and supervisory responsibility. The author noted that there may be others in similar positions without a baccalaureate degree, and these individuals would have the equivalent of a baccalaureate degree combining education and work experience. The second letter is from a president and CEO of a helicopter sales and service organization. This author opines that persons in positions such as the proffered position are required to hold a post-secondary degree in addition to relevant practical

¹ Professor John Barry is the aviation technology program director of a two-year community college. He has not established his expertise to comment on the occupation of piloting an aircraft, nor any personal knowledge of practices of the aviation industry with respect to requiring a four-year degree for aircraft mechanics.

technical and occupational experience. Neither author stated that a degree in a specific specialty is required for the position. Neither author described any industry data, surveys, literature or other reference materials on which they based their opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the commercial pilot and mechanic position.

The petitioner has not provided evidence to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Nor has the petitioner established that the particular position is so complex or unique that it can be performed only by an individual with a degree in order to satisfy the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner stated that the only other person employed by the petitioner with a degree is the president of the company. The petitioner employs 13 – 22 workers. Thus the evidence does not establish that the petitioner normally requires a degree.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not distinguished the duties of the proffered position from those normally required in the field. The duties parallel those in the *Handbook* for an aircraft pilot and an aircraft mechanic and technician, occupations that do not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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.