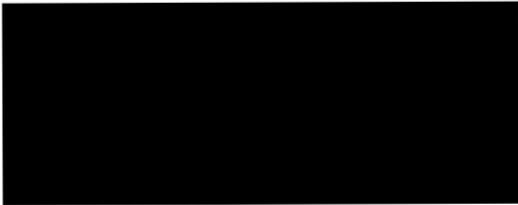




U.S. Citizenship  
and Immigration  
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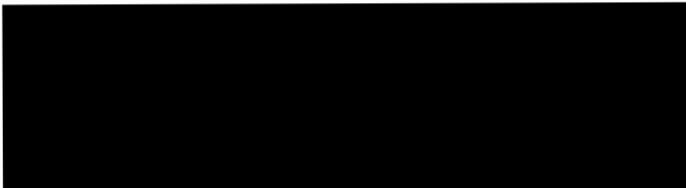
FILE: SRC 04 171 50444 Office: TEXAS SERVICE CENTER Date: MAR 27 2006

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.

*for* *Michael T. Kelly*  
Robert P. Wiemann, Director  
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 dismissed. The petition will be denied.

The petitioner is an international corporation, which, according to information on the petition, is engaged in the production of textile products.<sup>1</sup> It seeks to employ the beneficiary as a pilot/flight engineer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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

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<sup>1</sup> A review of the website at [REDACTED] finds that, on September 28, 2005, a public auction was held on the petitioner's premises to sell off its manufacturing equipment, including 170 knitting mills. Therefore, the current nature of the petitioning entity is not clear.

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 pilot/flight engineer. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 20, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: piloting and navigating the flight of a chartered King Air 300 for the transportation of passengers, freight, or for other purposes. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses academic training, which includes a commercial pilot's license from the Argentinean Air Force and a captain's license from the Argentinean Coast Guard, and professional experience.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is a specialty occupation. Counsel states further that the director did not consider the industry standard letter from Professor [REDACTED] from Embry-Riddle Aeronautical University or the information from the website of the Federal Aviation Administration, which indicates that certain pilots, such as corporate pilots, require a bachelor's degree. Counsel also states that the director did not consider the job requirements for pilots of other businesses, such as [REDACTED] and [REDACTED].

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 turns first 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Aircraft Pilots and Flight Engineers training requirements in the *Handbook*, 2006-2007 edition, finds no evidence to indicate that a baccalaureate or higher degree, or its equivalent, is required for a pilot/flight engineer job. Most airlines require at least two years of college and prefer to hire college graduates, although some small airlines hire high school graduates.

The record also contains an opinion from an academic expert who asserts, in part, that the proffered position requires a bachelor's degree in aeronautical science. The writer, however, does not provide any evidence in support of his assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a degree in aeronautical science. The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. 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).

The information from the website of the Federal Aviation Administration, which indicates that some employers of pilots may require a bachelor's degree, is noted. This information is not evidence that the position of a pilot/flight engineer is a specialty occupation. The website does not indicate a requirement for a degree in any specific specialty. Further, as discussed above, a review of the Aircraft Pilots and Flight Engineers training requirements in the *Handbook* finds no evidence to indicate that a baccalaureate or higher degree, or its equivalent, is required for a pilot/flight engineer job. In view of the foregoing, the petitioner has not demonstrated that a baccalaureate or higher degree in a specific specialty is required for the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for pilots and related positions. These advertisements are consistent with the information in the *Handbook* to the effect that, while there is no normal requirement for a bachelor's degree for pilot's positions, some require a bachelor's degree, but not in a specific specialty. This evidence does not establish a practice, common in the industry, of requiring a bachelor's degree in a specific specialty as required by this criterion.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation. The record contains a credentials evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the U.S. equivalent of a bachelor's degree in aeronautical science. The evaluation, however, is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this additional reason, the petition may not be approved.

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.