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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 02 271 53140 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

Mari Johnson

for 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 operates an aircraft maintenance facility, and seeks to employ the beneficiary as an aeronautical field service engineer. 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 proffered position is not a specialty occupation. On appeal, the petitioner submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary 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)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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 field 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 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 proceedings 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) the Form I-290B with the petitioner's brief. It is noted that on appeal, the petitioner amends the title of the proffered position and attempts to supplement the appeal with a new certified labor condition application and Form I-129 reflecting the new position title and duties. However, Citizenship and Immigration Services (CIS) regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). Furthermore, an amended petition must be filed separately with the requisite filing fee pursuant to the requirements of 8 C.F.R. § 103.2(a). Accordingly, the AAO will consider only documentation that relates to the position and the beneficiaries qualifications as they relate to the initial underlying petition. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an aeronautical field service engineer. Evidence of the beneficiary's duties is set forth in the I-129 petition. According to this evidence the beneficiary would: supervise, troubleshoot, and repair defective areas of aircraft; and perform scheduled and unscheduled interior and exterior aircraft maintenance or modifications using blueprints and other technical data in accordance with Federal Aviation Administration (FAA) regulations to return aircraft to an airworthiness condition. The petitioner requires a minimum of a bachelor's degree in aeronautical engineering for entry into the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, the petitioner submits a brief and additional information asserting that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those of aircraft and avionics equipment mechanics and service technicians. The *Handbook* notes that the majority of mechanics who work on civilian aircraft are certified by the FAA, and those that are certified can certify work completed by uncertified mechanics and perform inspections. The FAA requires at least 18 months of work experience for certification. Applicants' for certification must pass written and oral tests and demonstrate that they can do the work authorized by the applicable certificate. Most mechanics learn their vocation in trade schools certified by the FAA. A baccalaureate or higher degree is not the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The petitioner offers no evidence to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that the petitioner normally requires a degree in a specific specialty for the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (3). Furthermore, the duties of the offered position appear to be routine in the industry. They are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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