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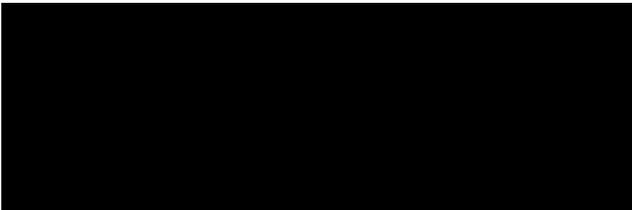
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FILE: SRC 04 083 52285 Office: TEXAS SERVICE CENTER Date: **SEP 02 2005**

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, 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 ground school manager. 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 ground school manager. 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 scheduling of ground training courses; assigning ground instructors; developing curriculum, training aids, and materials; writing, administering, and grading course tests; measuring quality control; allocating classrooms and training aids; assigning tutors for individual or remedial instruction; performing performance appraisals of ground instructors; and developing safety alerts. The petitioner requires a bachelor's degree, an FAA helicopter pilot's license, an FAA certified flight instructor rating, and experience as a flight instructor.

The director discussed the educational requirements of a pilot as reported in Department of Labor's *Occupational Outlook Handbook Handbook's* (the *Handbook*), and stated that the *Handbook* reveals that this occupation does not require a bachelor's degree or its equivalent. The director also addressed the timeliness of the instant petition.

On appeal, counsel asserts that in the *Handbook* most entrants into a pilot position have a college degree; that many employers are now making a college degree an educational requirement; that the Bureau of Labor Statistics' (BLS) information confirms this; and that a pilot is a transitional occupation from non-professional to professional or specialty occupation status. Counsel discusses the job postings, the letter from TLR International Programs, and how this evidence substantiates the requirement of a bachelor's degree for a flight instructor. Counsel contends that the petitioner is the only helicopter school in the world that is authorized to provide European training outside of Europe, and that offers a combined JAA/FAA course. Counsel discusses the proposed duties, stating that they are more complex than those of a simple pilot or a flight instructor, and involve flight training, international certification issues, extensive training, and academic administrative responsibilities.

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.

The *Handbook* discloses that the proposed duties reflect those of a flight instructor. The AAO recapitulates 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 instructor:

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 employers do not require a bachelor's degree for a pilot or flight instructor. Consequently, 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.

The evidence from TLR International Programs and the BLS does not persuasively demonstrate that the proposed position requires a bachelor's degree in a specific specialty. The letter from Mr. [REDACTED] of TLR International Programs opines that most flight training schools/colleges and businesses now require flight instructors to have a baccalaureate degree in a discipline such as economics, finance, accounting, and/or international business in addition to requiring flight credentials, instruction certification, or similar educational experience. For a position to qualify as a specialty occupation, the baccalaureate degree must be directly related to the proposed position. Here, Mr. [REDACTED] does not explain the connection between a business degree and the duties of a flight school instructor, and does not cite to or provide evidence to support his opinion about the educational requirements of 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)).

The American's CareerInfoNet document indicates that a bachelor's degree is required for an airline pilot, copilot, and flight engineer; nevertheless, this does not establish that a bachelor's degree *in a specific specialty* is required for these occupations. Additionally, this document is contradicted by the *Handbook* and the document entitled "Air Transportation" submitted by the petitioner, both of which state that a bachelor's degree is not required for a flight instructor or a pilot.

The submitted job postings are insufficient to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that a specific degree requirement is common to the industry in parallel positions among similar organizations, as the employers in the postings differ in nature from the petitioner; or their identity is not disclosed; or the employers do not require a bachelor's degree in a specific specialty. The petitioner is a helicopter training academy with 45 employees and \$6,000,000 in revenue. Engineering Support Personnel provides simulation and training support for the aerospace industry and the Department of Defense; Lockheed Martin is a public corporation; Rocky Mountain College and Central Missouri State University are large educational institutions; and Blue Sky is not described in the posting. OK3 Air and Aerospace University of North Dakota do not require a bachelor's degree in a specific specialty. For the

stated reasons, the postings fail to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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 contends that the petitioner is the only helicopter school in the world that is authorized to provide European training outside of Europe, and that it offers a combined JAA/FAA course. Counsel further claims that the proposed duties are more complex than those of a simple pilot or a flight instructor as they involve flight training, international certification issues, extensive training, and academic administrative responsibilities. Yet 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 a specific specialty. The proposed position entails providing a JAA course, but no evidence reveals that the course would be so complex or unique as to require the instructor to have a baccalaureate degree in a specific specialty. Accordingly, the proposed position does not have such complexity or uniqueness as to require a baccalaureate degree in a specific specialty.

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 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 a specific specialty. Even though the proposed position involves a JAA course, no evidence demonstrates that a JAA course 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 fourth 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.