

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



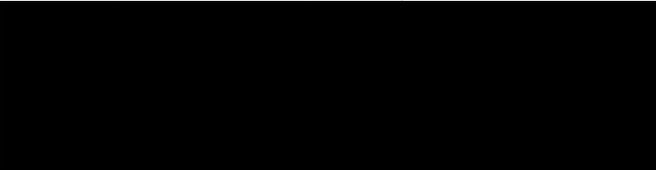
D2

FILE: SRC 04 083 50951 Office: TEXAS SERVICE CENTER Date: SEP 16 2005

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 Texas 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 training academy. It seeks to hire the beneficiary as an FAA chief flight instructor. 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 brief 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 an FAA chief flight instructor. 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 managing approximately 20 flight instructors, managing an average of 100 students; maintaining the FAA currency program for FAA inspectors for both VFR and IFR operations; providing aviation seminars for the GPS-IFR operations, and maintaining a close relationship between FAA and JAA training; responsible for monitoring, checking, ensuring, and coordinating the higher level of skills and currency among the staff. The petitioner indicated that the proffered position could only be filled by someone with a degree or its equivalent in education and pilot training.

The petitioner submitted a copy of the beneficiary’s foreign degree and a translation of the degree completed by the beneficiary. The beneficiary indicated that he had received a bachelor of business and marketing. However, the petitioner failed to submit certified translations of the documents, therefore the AAO cannot determine whether the evidence supports the petitioner’s claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director requested additional evidence to establish that the proffered position is a specialty occupation. The director requested evidence to establish that a bachelor’s degree or the equivalent is the required industry standard for the position being offered, and that the beneficiary has the degree. In response, the petitioner stated that the beneficiary would be a senior manager in the corporation and manage 27 faculty members all of whom are flight or ground instructors. The duties include long term planning, course development, accreditation issues, faculty performance evaluations and interacting with the FAA. The petitioner noted that it has no comparable competitor in the helicopter industry but that it could be compared to well established airplane schools such as Flight Safety International or Embry Riddle Aeronautical University. The petitioner stated that the chief flight instructors at both schools hold at least a bachelor’s degree. Additionally, the petitioner submitted a letter from an international cross-cultural consulting firm in which the author found that the proffered position requires a minimum of a baccalaureate degree.

In his denial, the director referred to the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) and found that the duties, as described by the petitioner, were most similar to the duties of a pilot,

an occupation which does not normally require a baccalaureate level of study. The director referred to the *Handbook's* description of training, other qualifications and advancement which indicated:

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 director found that the position did not meet any of the preceding criteria for classification as a specialty occupation.

On appeal, counsel refers to the *Handbook* to support his contention that the proffered position is a specialty occupation. Counsel explains that the position is so complex and unique that a bachelor's degree or its equivalent is needed to adequately perform the duties. Counsel notes that the beneficiary has a bachelor's degree in business and marketing. Counsel concludes by recapping the beneficiary's education and experience and states that the proffered position can only be filled by "someone with a degree or its equivalent in business management and pilot training."

As noted above, the *Handbook* indicates that most entrants to this occupation have a college degree and many employers are making a college degree an educational requirement. 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. 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 FAA chief flight instructor position.

Furthermore, in its initial petition, the petitioner stated that the degree requirement for the proffered position was "a degree or its equivalent in Education and Pilot Training." The petitioner stated that the beneficiary was well qualified for the position and indicated that the beneficiary had a bachelor's degree in business and marketing. On appeal, as indicated above, counsel stated that the proffered position could only be filled by "someone with a degree or its equivalent in business management and pilot training." The petitioner has not been consistent in its requirements for the position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel relies on submitted internet job postings of pilot instructors and flight instructors. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. For example, OK3 AIR indicates that a bachelor's degree is preferred and does not indicate in what specialty; Lockheed Martin's position indicates that the required education is a four year degree in a related discipline or equivalent experience/combined education; and Rocky Mountain College indicates that a bachelor's degree is required but does not specify in what area.

The petitioner submitted an opinion letter from a consulting firm. The author states that the proffered position:

... requires at least a minimum of a baccalaureate degree. It is also my opinion after interviewing [the beneficiary] and reviewing [the petitioner's] business documentation, academic curriculum, course content and faculty and student contact hours, and the general educational and business activities of other similar business ventures across this country and in other countries with similar activities and earned revenue, and international business contacts, that most flight training schools/colleges and businesses now require flight instructors to have, at a minimum, a baccalaureate degree in one of any number of disciplines such as economics, finance, accounting and/or International business in addition to flight credentials and instructor certification.

The author indicated that his qualifications were that he is an educator and a businessman with over thirty-five years of experience. The author indicated that he teaches graduate level international business relations and management styles. The author contended he was qualified to provide an expert opinion based on his experience and his several years of teaching in marketing, market research, hiring and evaluating professionals. The author did not provide evidence that his professional experience is in any way related to the field of the proffered position. 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 petitioner stated that two preeminent flight schools require their chief flight instructor to have at least a bachelor's degree. The petitioner did not state that the degree requirement for the two schools was in a particular specialty. The petitioner did not provide any evidence to support its assertions. 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)).

Consequently, the postings and letter fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement. Nor can the petitioner establish that the particular position is so complex or unique that it can be performed only by an individual with a degree.

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 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 duties parallel those in the *Handbook* for an aircraft pilot, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Additionally, the AAO notes that the petitioner did not submit evidence that the beneficiary holds a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). However, as discussed above, the proffered position is not a specialty occupation; therefore, the beneficiary's qualifications are not relevant.

SRC 04 083 50951

Page 6

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.