

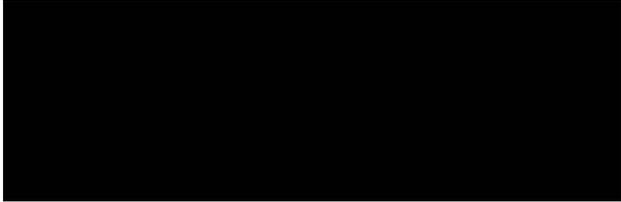
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**U.S. Citizenship
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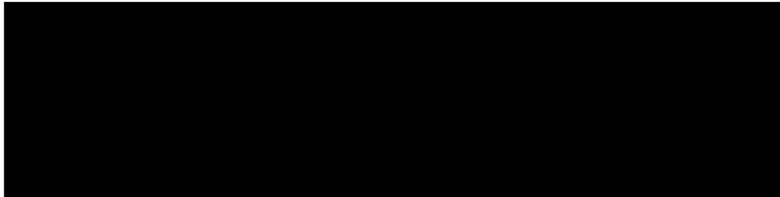


FILE: WAC 04 091 50372 Office: CALIFORNIA SERVICE CENTER Date: **MAR 03 2006**

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 operates four modified [REDACTED] light airplanes to perform aerial photography for [REDACTED] of Rochester, New York. It seeks to employ the beneficiary as a part-time safety officer. 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 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 part-time safety officer. Evidence of the beneficiary's duties includes the I-129 petition and the petitioner's response to the director's request for evidence.

According to this evidence, the beneficiary would perform duties that entail: assuring compliance with all FAA and governmental rules and regulations; updating and maintaining all maintenance and regulatory libraries, mandatory records, and documentation, including FAA worthiness directives, manufacturers' service bulletins, and notices of proposed rule making; tracking "pilot currency"; and serving as liaison between the petitioner, the National Transportation Safety Board, and other officials in the event of an aircraft accident and/or incident investigation. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in aeronautical science.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so specialized and complex as to require a bachelor's degree in a specific specialty. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, under the category of "Airfield Operations Specialists," 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 proposed duties of the proffered position closely parallel the job duties of the "Aviation Inspector" position, which is described in the DOL's OES (referring to the DOL's *Occupational Employment Statistics*), and the proffered position is not similar to the *Handbook's* "airfield operations specialist" position, as maintained by the director. According to counsel, the proffered position is a "Job Zone 4" occupation (referring to the Department of Labor's *O*Net*), which requires a degree. Counsel states further that the petitioner normally requires a minimum of a bachelor's degree for positions similar to the proffered position and the proposed duties are so specialized and complex as to require such a degree. Counsel also submits a job advertisement of a similar position to demonstrate that a degree requirement is common to the industry.

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 airfield operations specialists job description in the *Handbook*, 2006-2007 edition, confirms the accuracy of the director's assessment to the effect that the job duties are similar to the responsibilities of an airfield operations specialist. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for this position.

Furthermore, even if the AAO were to conclude that the proffered position is that of an aviation inspector with a Job Zone category of 4, counsel's reference to and assertions about the relevance of information from the *O*Net* are not persuasive. A Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, counsel submitted an Internet job posting for an operations security coordinator at [REDACTED] which operates a fleet of more than 200 business jets for more than 2,000 fractional owners, and is a wholly owned subsidiary of [REDACTED]. There is no evidence, however, to show that the employer issuing this posting is similar to the petitioner, or that the advertised position is parallel to the instant position. The proposed duties of the advertised position entail developing and coordinating an appropriate security training program for company employees, aircraft passengers, and contractors, and providing leadership and guidance to management across all departments to develop and implement effective and appropriate security procedures for company employees, passengers, aircraft, and other capital assets. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised position. Thus, the advertisement has no relevance.

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. On appeal, counsel states that the petitioner “submitted evidence indicating that within the last two years it had two positions in the same or similar field as Safety Officer and that those positions required a minimum of a baccalaureate degree or its equivalent.” The record contains the following statement by the petitioner's aircraft maintenance supervisor: “All Safety Officer or similar positions at [REDACTED] are required to have a baccalaureate degree or equivalent as a minimum requirement.” The record, however, does not contain any evidence of the petitioner's past hiring practices and, therefore, the petitioner has not met its burden of proof in this regard. 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)). Further, CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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.¹

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and “might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition.” *See id.* at 387.

In this regard, the petitioner fails to establish that the safety officer position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

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.

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.