

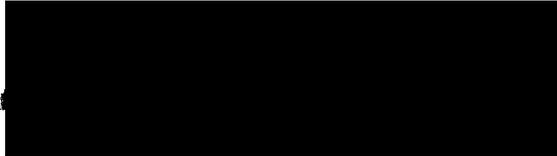
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U.S. Citizenship
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FILE: LIN 03 170 50667 Office: NEBRASKA SERVICE CENTER Date: MAY 09 2011

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 materials 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 service center director denied the nonimmigrant visa petition. The proceeding was reopened, on the petitioner's motion, and the director again denied the petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a general construction contractor. It seeks to employ the beneficiary as a mechanical engineer and to classify him 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 petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold 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;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the purpose of deciding whether the beneficiary is qualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), 8 C.F.R. § 214.2(h)(4)(iii)(D) provides that the determination shall be based on one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as: (i) Recognition of expertise in the specialty occupation by at least two recognized authorities ¹ in the same specialty

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion

occupation; (ii) Membership in a recognized foreign or United States association or society in the specialty occupation; (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers; (iv) Licensure or registration to practice the specialty occupation in a foreign country; or (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

As evidence of the beneficiary's qualifications to perform the services of the proffered engineering position, the petitioner initially submitted evidence that the beneficiary, a native of Romania, attended the Military Aviation Officers Academy for four years and received a diploma in October 1983 according him the status of a military aviator with the rank of lieutenant in the Romanian air force. Supplementing the diploma was a copy of the beneficiary's academic transcript. The petitioner also submitted a credentials analysis/evaluation report from the Washington Evaluation Service in Washington, D.C., asserting that the beneficiary's diploma is academically equivalent to a bachelor of aviation science with a specialization in mechanical engineering from an accredited U.S. university. In addition, copies were submitted of two diplomas the beneficiary received from the Romanian Ministry of National Education for computer programming courses he completed in 2000 and 2001.

In his first decision denying the petition the director declared that the beneficiary's coursework at the Military Aviation Officers Academy included only one course – applied mathematics – that is normally associated with a mechanical engineering degree and directly related to the proffered position in this case. Moreover, the credentials evaluation lacked crucial indicia of reliability. The evaluation provided no rationale for its conclusion that an academic curriculum with so few engineering-related courses was equivalent to a U.S. degree in mechanical engineering. Nor did the document demonstrate that the evaluator had the authority to grant college credit for work experience. In addition, much of the text detailing the evaluator's curriculum vitae was poorly copied and unreadable.

In support of its motion to reopen the petitioner submitted additional documentation, including an official employment record indicating that the beneficiary worked as a "mechanical engineering technician" for a transport equipment station from October 1989 to February 1990 and as a "controlling inspector" at an air transport company, Tarom, from February 1990 to January 1992; an attestation from the human resources chief at Tarom that the beneficiary worked at the company "as a direction inspector for the flight sector" for two years; the beneficiary's transcript from the Military Aviation Officers Academy highlighting his coursework in aviation technology, aircraft dynamics and mechanics, aircraft construction and operation, aircraft engine construction and operation, and special installation and electrical technology of the board; as well as the beneficiary's high school transcript highlighting engineering-related coursework.

must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used.
8 C.F.R. § 214.2(h)(4)(ii).

In his second decision denying the petition the director stated that the beneficiary's official employment record did not establish that any of his work experience in Romania was as a mechanical engineer because it contained no details about the beneficiary's on-the-job duties and responsibilities. The attestation from Tarom, the director stated, listed duties which appeared to indicate that the beneficiary worked at the company as a flight line mechanic, not as a mechanical engineer. As for the beneficiary's aviation-related engineering technology courses at the Military Aviation Officers Academy, the director pointed out that the beneficiary's major was identified on the transcript as "active flyer/navigator" and concluded that his coursework at the academy does not equate to a bachelor of science degree in mechanical engineering, as required for most entry-level positions in the specialty occupation. Lastly, the director discounted the beneficiary's high school coursework for the purposes of this petition because it was not at a baccalaureate level.

On appeal counsel has submitted two letters from former employers of the beneficiary in Romania and asserts that they confirm his almost six years of employment experience as a mechanical engineer. One is a follow-up letter from the human resources chief at Tarom, confirming that the beneficiary worked for the company from February 1990 to January 1992 as an airfield operations inspector and listing the job duties in detail. The second is a letter from S.C. Stepson Impex S.R.L. of Bucharest, a company involved in the production and distribution of safety reinforced metal doors, automated mechanical lockers and other safety devices, stating that the beneficiary worked for the company from February 1992 to December 1995 as a mechanical engineer and listing the duties of the job. Counsel asserts that this employment experience, together with the beneficiary's educational credentials, equates to a baccalaureate degree in mechanical engineering or a related field, thus qualifying the beneficiary to perform the services of the mechanical engineering position proffered by the petitioner.

The AAO does not agree with counsel's contention. The beneficiary does not qualify to perform the services of a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2 (h)(4)(iii)(C). He does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) because he does not have a baccalaureate degree from a U.S. college or university. Nor does the beneficiary qualify under 8 C.F.R. § 214.2 (h)(4)(iii)(C)(2) because the transcripts from the Military Aviation Officers Academy in Romania do not show that the beneficiary had sufficient coursework in mechanical engineering and related fields for his diploma to be equivalent to a U.S. baccalaureate degree in mechanical engineering or a related specialty. Accordingly, the academic evaluation in the record, which is based on the transcripts, lacks the evidentiary weight to support its conclusion that the beneficiary's Romanian diploma is equivalent to a bachelor of aviation science, specializing in mechanical engineering, from a U.S. college or university. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). Furthermore, the beneficiary does not qualify to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) because there is no evidence that he has an engineering license from the State of Indiana.

Lastly, the beneficiary does not have a combination of education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate degree in mechanical engineering or a related specialty, as required to meet the qualifying criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The

regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) specifies that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The letter from the human resources chief at Tarom, confirming that the beneficiary worked for the company from February 1990 to January 1992 as an airfield operations inspector, lists the job duties as follows:

- Informing the shift executives about the special preparations ordered for each flight, immediately taking measures to inform the Chief Engineer or Technical Manager about all circumstances that may result in a delay of flights.
- Following and warning the technical personnel about initiation of works, including aircraft servicing, defrosting, heating, and refueling.
- Checking via aircraft service mechanics (flight and non-flight mechanics) whether each aircraft ready for takeoff has been stripped in accordance with regulations, and requesting the completion of inventory as necessary and according to aircraft type.
- Requesting service teams for aircraft needing technical support.
- Informing the Technical Manager and the Chief Engineer daily about technical disorders and special circumstances.

The job duties listed above do not appear to involve any mechanical engineering tasks and the petitioner has not explained how their performance relates to the specialty occupation of mechanical engineering or a related field, as required for the beneficiary to be given credit toward a mechanical engineering degree. An even more detailed job description from Tarom, submitted with the above letter on appeal, likewise fails to indicate how the position – aptly entitled “air field operations inspector / technical dispatcher” – is related to the specialty occupation of mechanical engineering. The AAO agrees with the director that the beneficiary’s two-year employment with Tarom was not in an area related to the specialty. As for the beneficiary’s work experience under the title “mechanical engineer” with the second Romanian company – S.C. Stepson Impex S.R.L. – from February 1992 to December 1995, the duties of the position were listed in the letter from the company’s general manager as follows:

- Helped in the process of designing the main products.
- Developed and implemented the marketing plan.
- Developed and maintained a customer base.
- Responsible for engineering and technical expertise on company’s products.
- Responsible for operating, maintaining, and repairing of major operating systems.
- Maintained all on-site production operations.
- Interpreted testing results against product requirements.
- Tested mechanical devices, materials used in manufacturing process and finished products.
- Interpreted and documented test results and provided summary reports.
- Scheduled and procured test equipment, instruments and hardware to support testing schedule.
- Supervised, developed and motivated production team members.
- Responsible for the safety, quality and productivity of the production department.
- Scheduled and prioritized maintenance activities, developed and enforced preventative maintenance programs.
- Ordered supplies, tools and parts required for production and repairs.
- Generated reports detailing problems and countermeasures.
- Demonstrated planning, problem solving and organizational skills.

- Created documentation to support new and improved manufacturing processes.
- Coordinated with suppliers and other external resources needed in developing and implementing new processes/product plans.

Based on the foregoing duties the AAO is not persuaded that the beneficiary was performing the services of a mechanical engineer from February 1992 to December 1995. The duties are described in general terminology which provides no details about what mechanical engineering tasks the beneficiary performed, the specific projects he worked on, or his position in the company's hierarchy. The letter does not demonstrate that the job required the theoretical and practical application of a body of highly specialized mechanical engineering knowledge, that the beneficiary was working with peers, supervisors or subordinates with degrees in mechanical engineering or related specialties, or that the beneficiary has recognition of expertise in the specialty such as those enumerated in 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5). Thus, none of the beneficiary's work experience can be counted toward bachelor's degree equivalence in mechanical engineering or a related specialty. As for the beneficiary's educational credentials, the AAO will accept two years of academic credit earned by the beneficiary as general coursework preceding the specialization of a degree. Counsel claims that six of the beneficiary's courses at the Military Aviation Officers Academy were engineering related, which is supported by the record. Those courses, however, constitute less than one-fifth of the beneficiary's four-year course load of 32 courses. That total equates to less than one year of academic training toward a degree in mechanical engineering or a related specialty. Thus, the beneficiary does not have the necessary combination of academic training and work experience to fulfill the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) and thereby qualify to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Based on the foregoing analysis, the AAO concludes that the beneficiary does not qualify to perform the services of the specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(C).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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