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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: SRC 02 244 51905

Office: TEXAS SERVICE CENTER

Date:

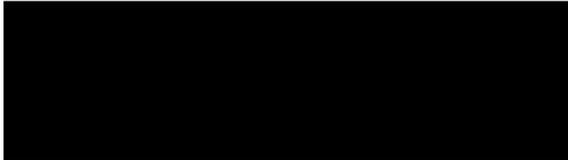
APR 21 2003

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an FAA certified air carrier with 100 employees and an approximate gross annual income of \$20 million. It seeks to extend its authorization to employ the beneficiary as an aircraft pilot in command for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and supporting documentation.

The term "specialty occupation" is defined at Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1184(i)(1), 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:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such 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.

The director determined the petitioner had failed to establish that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

On appeal, counsel asserts that the duties of the proffered position are so specialized and complex that the combination of knowledge and experience required to perform them is equivalent to the attainment of a baccalaureate degree in a specific specialty.

When considering whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. The petitioner's Vice President, [REDACTED] stated in a letter dated July 1, 2002 that Phoenix Air wished to extend its authorization to employ the beneficiary to serve as pilot aboard its 15 Gulfstream G-159 turbo prop aircraft, commonly referred to as the "G-1." Mr. [REDACTED] explained:

The G-1 was built by Grumman-Gulfstream Corporation in Savannah, Georgia. Only 203 G-1's were ever built, with the last completion in 1968. Today, there are only an estimated 130 of these aircraft left flying in the world.

Due to the rarity of the aircraft, and the fact it has been out of production for some 34 years, there is an extremely limited pool of qualified pilots in the U.S. trained to fly the G-1 aircraft.

Mr. Thompson stated that the beneficiary was uniquely qualified to pilot the G-1 aircraft because he previously flew this aircraft in Venezuela. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Pilot airplane to transport passengers, mail, or freight, or for other commercial purposes: Reviews ship's papers to ascertain factors, such as load weight, fuel supply, weather conditions, flight route, and schedule. Order changes in fuel supply, load, route, or schedule to ensure safety of flight. Pilot airplane to destination adhering to flight plan, regulations, and procedures of federal government.

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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The position is that of an air transport pilot. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition, at pages 563-564 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as an airline or air transport pilot. All pilots who are paid to transport passengers or cargo must have a commercial pilot's license issued by the Federal Aviation Administration (FAA). Airline pilots must fulfill additional requirements. Pilots must have an airline transport pilot's license. Applicants for this license must be at least 23 years old and have a minimum of 1,500 hours of flying experience, including night and instrument flying, and must pass FAA written and flight examinations. Usually, they also have one or more advanced ratings, such as multi-engine aircraft or aircraft type ratings dependent upon the requirements of their particular flying jobs.

The Armed Forces have always been an important source of trained pilots for civilian jobs. Persons without Armed Forces training may become pilots by attending flight schools. The FAA has certified about 600 civilian flying schools, including some colleges and universities that offer degree credit for pilot training. Over the projection period, Federal budget reductions are expected to reduce military pilot training. As a result, FAA-certified schools will train a larger share of pilots than in the past. Prospective pilots also may learn to fly by taking lessons from individual FAA-certified flight instructors.

The *Handbook* also notes the following:

Although some small airlines hire high school graduates, most airlines require at least two 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.

There is no indication in the *Handbook*, however, that employers normally require at least a baccalaureate degree in a specific specialty for airline pilot positions.

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles* (DOT) (4th Ed., Rev. 1991). However, the DOT is not considered to be a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the DOT with the Occupational Information Network (O*Net). Both the DOT and O*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a

claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the DOT.

Additionally, the petitioner has not submitted evidence to show that the requirement of a baccalaureate degree in a specific specialty or its equivalent is standard to the industry in parallel positions among similar organizations.

Furthermore, the petitioner has not shown that it required a baccalaureate degree in a specific specialty or its equivalent for the proffered position. Indeed, counsel specifically stated in correspondence dated September 3, 2002:

The Petitioner does not require a four-year degree and does not indicate in the record that a four-year degree is required. For purposes of clarification to the Service, the Petitioner does require the beneficiary to hold an FAA Air Transport Pilot (ATP) Certificate and at least 5,000 hours in type Grumman-Gulfstream G-159 turbo prop aircraft.

Counsel asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty. In an attempt to corroborate this assertion, counsel has submitted the following documents:

1. A copy of the federal regulations at 14 C.F.R. § 61.153 setting forth the requirements for the issuance of airline transport pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the general operating rules for persons who hold those certificates and ratings;
2. An excerpt from the website of the Air Line Pilots Association describing the requirements for an Air Transport Pilot license;
3. An excerpt from an FAA advisory circular regarding the certification of pilots and flight and ground instructors;
4. the FAA publication *Practical Test Standards for the Air Transport Pilot and Aircraft Type Rating*;

5. Gulfstream 1 - Pilot Checklist;
6. Gulfstream 1 - Cockpit Diagram; and
7. The G-1 Training Manual.

Counsel contends that the knowledge, training, and skills required to pilot the G-1 aircraft are more complex and advanced than those normally required to pilot other aircraft of similar size and configuration. The fact that the G-1 is an older aircraft that has been out of production for 34 years does not in itself demonstrate that the knowledge required to pilot the aircraft is sufficiently specialized and complex to require a baccalaureate degree in a specific specialty or its equivalent. Counsel has not submitted any independent evidence from a recognized authority in the field to corroborate his claim. It was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. Indeed, Mr. Thompson specifically stated in a letter dated July 1, 2002 that there is an extremely limited pool of qualified pilots in the U.S. trained to fly the G-1 aircraft. It would appear that the petitioner has filed H-1B petitions on the beneficiary's behalf because he possesses unusual knowledge and skills, not because the knowledge and skills required to fly the G-1 aircraft are more specialized and complex than those required to fly similar aircraft. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Counsel asserts that the Bureau has already determined the proffered position is a specialty occupation since the Bureau (formerly the Service) has approved a previous petition filed on behalf of the beneficiary by Phoenix Air Group, Inc. This record of proceeding does not, however, contain any of the supporting evidence submitted to the Texas Service Center in the prior proceeding. In the absence of all of the corroborating evidence contained in that record of proceeding, the AAO is unable to determine whether the original H-1B petition was approved in error.

If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of

proceeding, however, the approval of the prior petition would have been erroneous. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals which may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither the Bureau nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Additionally, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.