

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**Identifying data deleted to
prevent clearly unwarranted**

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

AUG 15 2003

File: SRC 03 007 52250 Office: TEXAS SERVICE CENTER Date:

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 of the Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a company that restores and refurbishes commercial and private airplanes and floatplanes. It has one employee and a gross annual income in excess of \$84,000. The petitioner seeks to extend its authorization to employ the beneficiary as chief restoration engineer for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation. The director also denied the application to extend the beneficiary's stay in H-1B status, and determined that the beneficiary had been accruing unlawful presence in the United States as of the date of the denial.

On appeal, counsel submits a brief and additional documentation.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The first issue to be addressed in this proceeding is whether the beneficiary is qualified to perform the services of an aeronautical restoration engineer. The record shows that the beneficiary is the owner and sole employee of the petitioning

company. The petitioner described the beneficiary's duties in pertinent part as follows:

Direct and coordinate activities involved in the purchase, restoration, repair, and sale for [sic] commercial and private airplanes and floatplanes. Supervise, instruct, and train staff of engine specialists, aviation mechanics and airframe and powerplant engineers engaged in the restoration and repair of aircraft. Inspect, check, service, troubleshoot, and repair aircraft's hydraulic systems electrical systems, fuel systems, pneumatic vacuum systems, heating, cooling and pressurization systems, and control systems. Perform major and minor repairs, including repairs on all-metal and tube and fabric aircraft from landing and taxing [sic] accidents, storm damage, gear up landing and collisions. Perform inspections and test procedures. Read and use blueprints for fabrication and restoration procedures. Inspect and evaluate employees' work product and performance. Identify and select aviation industry hardware and aircraft finishing material. Inspect, negotiate and purchase aircraft nationally and internationally. Conduct contract negotiations with customers and suppliers in the U.S. and Germany.

On appeal, counsel states that the petitioner has the equivalent of a bachelor's degree in aviation science. In support of his statement, counsel submits photocopies of the licenses issued to the beneficiary by the Federal Aviation Administration (FAA) and an evaluation of the beneficiary's credentials.

The record shows that the beneficiary received a Doctor of Veterinary Medicine (D.V.M.) degree from the Free University of Berlin on April 17, 1978. This degree does not qualify him to perform the duties of an aeronautical engineer. Therefore, the petitioner must show that the beneficiary's training and experience are equivalent to a bachelor's degree in aviation science or aeronautical engineering.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or

higher degree in the specialty and shall be determined by 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.

The record shows that the beneficiary has been issued the following licenses by the FAA:

1. private pilot license issued in August of 1994.
2. flight instructor, single engine airplane, issued January 1, 1995.
3. airframe and powerplant mechanic issued September 21, 1990.
4. inspection authorization issued July 6, 1999.
5. medical certificate second class issued July 15, 1999.
5. commercial pilot license issued March 15, 2001.

On appeal, counsel submits a credentials evaluation from John Johnson, an associate professor at Embry-Riddle Aeronautical University. Mr. Johnson states that the beneficiary has completed more than five years of professional training and work experience in aviation science and related areas. He further states:

During this period [the beneficiary] served in positions of advanced professional responsibility and sophistication, together with peers, under the supervision of managers, at a level of employment commensurate with [b]achelor's-level training.

Mr. Johnson explains that the beneficiary worked under the supervision of a licensed aircraft mechanic in Germany from May 1987 through July 1990 in order to qualify for the airframe and powerplant mechanic license. Mr. Johnson found the beneficiary's training and work experience equivalent to a Bachelor of Aviation Science degree from an institute of higher education in the United States.

The Bureau uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an

advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this case, the petitioner has not provided any evidence to document the beneficiary's training or work experience. Additionally, the petitioner has not provided any evidence to show that the evaluator is 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. Therefore, the evaluation is accorded less weight.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. 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 in the same specialty 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, 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.

Since no evidence has been submitted to document the beneficiary's training and work experience, it is not possible to determine from examination of the record whether the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or 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.

Although the petitioner has submitted a letter from a retired Admiral, U.S. Navy, the petitioner has not submitted documents showing recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation, in this case aircraft maintenance and restoration. The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in aeronautical engineering or aviation science. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to work as an aerospace engineer in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary has the equivalent of a baccalaureate degree in a specialty occupation. Accordingly, the director's decision to deny the petition on this basis shall not be disturbed.

The Bureau now turns to the denial of the beneficiary's application to extend his stay in H-1B status, and the director's statement that the beneficiary had begun accruing unlawful presence in the United States as of the date of the denial.

Bureau regulations prohibit a petitioner or beneficiary from appealing the denial of an application for extension of stay

that has been filed on an I-129 petition. 8 C.F.R. § 214.1(c)(5). Accordingly, this issue shall not be addressed further in this proceeding. Regarding the director's comments relating to the beneficiary's accrual of unlawful presence, the director's decision to deny the petition did not become final on the date of the decision because the petitioner submitted a timely appeal. See 8 C.F.R. § 103.3(a)(2)(i). Therefore, the beneficiary had not begun accruing unlawful presence as of the date of the denial. The director's comments relating to this issue shall, therefore, be withdrawn.

With regard to the approval of a previous petition, it is noted that the director's decision does not indicate whether she reviewed the approval of the initial nonimmigrant petition, and this record of proceeding does not contain a copy of the previous petition and its supporting documentation. If the prior petition was approved based on the evidence contained in this record of proceeding, however, the approval of the initial petition was clearly an error. The Bureau is not required to approve petitions where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *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 not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.).

Beyond the decision of the director, it is noted that the proffered position of chief restoration engineer does not appear to qualify as a specialty occupation. The position most closely parallels that of an aircraft and avionics equipment mechanic as described by the Department of Labor in the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 483-485. According to the *Handbook* at page 484, most airframe and powerplant mechanics learn their job in one of about 200 trade schools certified by the FAA. About one third of these schools award two-year and four-year degrees in avionics, aviation technology, or aviation maintenance management. There is no indication in the *Handbook* that a bachelor's degree in aviation science or a related field is normally the minimum requirement for entry into the occupation.

In addition, the Bureau notes that, on appeal, the petitioner states, "[the beneficiary] has invested . . . hundreds of thousands of dollars on a home and farm for his family to live." The petitioner's statement indicates that the beneficiary's stay in the United States is not "temporary," as that term is contemplated in section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Although the director did not address these issues in his denial of the petition, they are, nevertheless, essential to establishing eligibility for this visa classification. As the appeal is being dismissed on another ground, however, these issues will not be examined further.

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.