

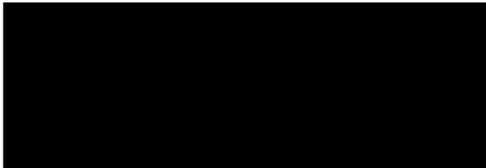
D2

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: SRC-00-119-53462 Office: Texas Service Center

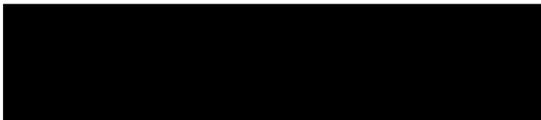
Date: MAR 13 2003

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:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

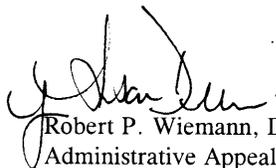
INSTRUCTIONS:

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 decision of the director will be withdrawn and the petition will be remanded for further consideration and action.

The petitioner is an air charter company with 35 employees and a gross annual income of \$4,800,000. It seeks to employ the beneficiary as a pilot/captain for a period of three years. The director determined that the petitioner was seeking a change of the beneficiary's nonimmigrant classification from M-1 student to H-1B temporary worker. The director, therefore, denied the petition because an M-1 student cannot change nonimmigrant status to that of an H-1B temporary worker if the education or training which the alien received as an M-1 student enables him to qualify for classification as an H-1B temporary worker.

On appeal, counsel states that the petitioner is not applying for a change of the beneficiary's nonimmigrant status from M-1 student to H-1B temporary worker, but rather is seeking approval of the nonimmigrant petition to permit the beneficiary to apply for an H-1B visa abroad. Counsel asserts that the beneficiary was already qualified to perform services in a specialty occupation prior to receiving training as a pilot in M-1 student status in the United States.

Pursuant to 8 C.F.R. § 248.1(d), an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act shall be denied if the education or training the student received while an M-1 student enables the student to meet the qualifications for temporary worker classification under section 101(a)(15)(H) of the Act.

In this case, the petitioner indicated on the I-129 petition that it is seeking approval of the nonimmigrant petition so that the beneficiary may apply for an H-1B visa abroad, not change the beneficiary's nonimmigrant status from M-1 student to H-1B temporary worker. Therefore, the director's decision will be withdrawn. Since the petitioner is not seeking a change of the beneficiary's nonimmigrant status in the United States, the question of whether the beneficiary's training in this country qualifies him to perform services in a specialty occupation will not be addressed in this decision.

Nevertheless, the petition may not be approved at this time. The record does not contain sufficient evidence to support a finding that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation. It is noted that 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 a commercial pilot. The Handbook notes the following regarding the normal educational requirements for positions as commercial pilots:*

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.

There is no indication, however, that such employers seek college graduates with a degree in a specific specialty for positions as commercial pilots.

Accordingly, the matter will be remanded to the director for further review of the evidence of record and determination as to whether the proffered position qualifies as a specialty occupation and whether the beneficiary qualifies to perform services in a specialty occupation. The director may request any additional evidence she deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded to her for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.