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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: LIN 01 251 51150 OFFICE: NEBRASKA SERVICE CENTER

DATE: **NOV 19 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)

IN BEHALF OF PETITIONER:



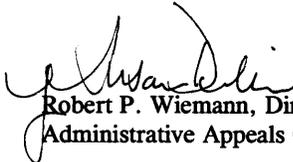
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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 Director of the Nebraska Service Center 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 is a cargo airline that employs 65 persons and has a gross annual income of \$11,856,000. It seeks to employ the beneficiary as an aviation mechanical engineer. The director denied the petition because: (1) the evidence did not establish that the beneficiary is qualified to perform a specialty occupation; and (2) it was not shown that the offered position is a specialty occupation.

On appeal, counsel submits a brief and copies of previously submitted evidence. Counsel states, in part, that the director committed an error of law and fact, and that the beneficiary is qualified to perform the duties of the offered position, which counsel asserts is a specialty occupation.

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 for the classification of qualified nonimmigrant 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 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.

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 in 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.

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.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (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.

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

- (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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, 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 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 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

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. . . . 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, 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.

In the original petition, which the service center received on August 27, 2001, the petitioner described the proffered position thusly:

The individual is responsible for researching, planning and designing all mechanical and electromechanical systems and products utilized on aviation equipment and aircraft. The individual will design and plan all maintenance and overhaul systems and equipment, will ensure optimization of utilization of tooling, fixturing and equipment. He establishes all equipment capabilities, down time, error rates and ensures compliance with capabilities and efforts to improve systems and equipment. He will ensure all aviation equipment is in compliance with aviation requirements and regulations and all company specifications. He will conduct all installation and modifications of equipment, establish and maintain control charts, interface with vendors, supervise technicians and organize work assignments. He will supervise and complete all diagnostic and repair work, establish and maintain proper spare parts, design and implement safety safeguards.

On November 2, 2001, the director requested further evidence regarding the nature of the petitioner's company and the qualifications of the evaluators to evaluate the beneficiary's past training and experience. In response, the petitioner submitted an explanatory statement along with documentation relating to the beneficiary's qualifications. The director denied the petition on February 20, 2002, finding that the evidence did not establish that the position is a specialty occupation or that the beneficiary is qualified to perform a specialty occupation. The director noted that the proposed duties could be likened to those of an aircraft mechanic.

On appeal, counsel states that the petitioner requires the services of a mechanical engineer, not a mechanic; thus, the position should be considered a specialty occupation. Counsel also asserts that the evidence is sufficient to establish that the beneficiary's combination of training and work experience is the equivalent of a bachelor of science degree in mechanical engineering.

The first issue is whether the position qualifies as a specialty occupation. The petitioner is a cargo air carrier with a fleet of various models of aircraft. The record contains no documentation, other than statements by counsel and the petitioner, to support the assertion that the petitioner requires an individual to research, plan, and design all mechanical and electromechanical systems and products utilized on aviation equipment and aircraft. There is no information as to what portion of the beneficiary's time would be spent on such duties, if present. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The rest of the duties listed fall under the category of aircraft equipment mechanics, as described in the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2002-2003 edition at page 483. While the duties of the aircraft mechanic are complex and require meticulous attention to detail, they do not require a bachelor's degree or its equivalent in a specific specialty. Inasmuch as the *Handbook* does not indicate that a bachelor's degree is the usual minimum requirement for entry into the proffered position, the criterion listed at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) has not been met.

The record does not contain any evidence that the degree requirement is common to the industry in parallel positions among similar organizations or that this particular position is so complex or unique that it can be performed only by an individual with a degree. The petitioner submitted no evidence that it normally requires a degree or its equivalent for the position, and the record does not establish that 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 not established that the proffered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A); thus, it does not qualify as a specialty occupation.

The second issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), to qualify to perform services in a specialty occupation, the alien must 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. The beneficiary of this petition does not possess a foreign or U.S. college-level degree. In order to analyze the educational equivalency required by paragraph (h)(4)(iii)(C)(4), the AAO applies the regulatory guidelines found at 8 C.F.R. § 214.2(h)(4)(iii)(D). The first and fifth paragraphs of this section are those with relevance to the instant record.

The evaluations of the beneficiary's past work experience are examined in light of the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) that such evaluations must be rendered by an official who has authority to grant college-level credit for training and/or experience in the specialty (mechanical engineering) at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. There is no documentation on the record that the individuals who provided the evaluations have the authority to grant college credit. The documents, thus, fail to meet the requirements of this section's first paragraph.

The fifth paragraph in this section gives Citizenship and Immigration Services (CIS) the authority to determine whether the equivalent of the degree required has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The evidence on the record does not clearly demonstrate that the beneficiary's training and work experience included the theoretical and practical application of mechanical engineering, nor that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in mechanical engineering. The information relating to the beneficiary's previous job duties, accomplishments, and training indicate that he has extensive experience in the repair and maintenance of various types of aircraft. The record does not demonstrate, however, that the beneficiary's previous positions entailed progressively

responsible positions directly related to mechanical engineering.

Regarding the evaluation letters, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Given that the evaluation letters are based on evidence that demonstrates experience in mechanics but not in mechanical engineering, the letters cannot be used to support the beneficiary's recognition of expertise in mechanical engineering. The evidence does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record does not demonstrate that the beneficiary is qualified to perform the specialty occupation of mechanical engineering.

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.