



U.S. Citizenship
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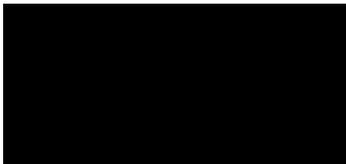
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FILE: SRC 04 077 51503 Office: TEXAS SERVICE CENTER Date: OCT 03 2005

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 documents 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 director of the 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 provides on demand jet charter and air ambulance services. It seeks to employ the beneficiary as a pilot/manager European operations. The petitioner, therefore, endeavors to classify the beneficiary 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 proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a pilot/manager European operations. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail facilitating and managing expansion into European operations, and piloting trans-Atlantic aircraft. The petitioner states that the beneficiary is qualified for the proposed position based on his training and experience.

The director stated that the proposed position resembles a pilot as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation can be performed by a person with a high school diploma, flight certification, and an associate's degree. A bachelor's degree or the equivalent, the director stated, is not the minimum requirement for the position.

On appeal, counsel states that the proposed position is a specialty occupation, and that CIS previously approved an H-1B petition filed on behalf of the beneficiary by the petitioner. Counsel states that the *Handbook's* information discussed by the director relates to an entry-level pilot and not the more advanced position of pilot/manager European operations. According to counsel, the director did not consider all of the *Handbook's* information about the qualifications of pilots. Counsel discusses evidence submitted on appeal: a credentials evaluation, an e-mail, a letter from the petitioner, and information from the *Handbook*.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position fails to qualify as a specialty occupation.

Counsel asserts that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition filed by the petitioner on behalf of the beneficiary in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, counsel's statements are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. 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. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm.

1988). Neither CIS 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).

The prior approval does not preclude CIS from denying an extension of the original visa petition based on a reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The AAO next turns to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* discloses that the proposed duties reflect those of a professional-level pilot who transports passengers and cargo. The *Handbook* conveys the following educational requirements of pilots:

All pilots who are paid to transport passengers or cargo must have a commercial pilot's license with an instrument rating issued by the FAA. Helicopter pilots must hold a commercial pilot's certificate with a helicopter rating. To qualify for these licenses, applicants must be at least 18 years old and have at least 250 hours of flight experience. The experience required can be reduced through participation in certain flight school curricula approved by the FAA. Applicants also must pass a strict physical examination to make sure that they are in good health and have 20/20 vision with or without glasses, good hearing, and no physical handicaps that could impair their performance. They must pass a written test that includes questions on the principles of safe flight, navigation techniques, and FAA regulations, and must demonstrate their flying ability to FAA or designated examiners.

...

The U.S. Armed Forces have always been an important source of trained pilots for civilian jobs. Military pilots gain valuable experience on jet aircraft and helicopters, and persons with

this experience usually are preferred for civilian pilot jobs. This primarily reflects the extensive flying time military pilots receive. Persons without Armed Forces training may become pilots by attending flight schools or by taking lessons from individual FAA-certified flight instructors. . . .

Although some small airlines will hire high school graduates, most airlines require at least 2 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.

The *Handbook* reports that employers do not require a bachelor's degree for a pilot. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

No evidence in the record establishes the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence establishes the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As the *Handbook* reveals, the proposed duties parallel those of a pilot, which is an occupation that does not require a bachelor's degree in a specific specialty.

No evidence in the record establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must show that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner indicates that the beneficiary will be responsible for piloting Learjet and Challenger aircraft. In the petitioner's December 17, 2003 letter, the petitioner states that its area of operation extends through North America, the Caribbean basin, and Mexico, and that expansion to Europe is forecasted to commence in 2004. The petitioner's March 24, 2004 letter conveys that the beneficiary will facilitate and manage the petitioner's expansion into European operations as well as pilot trans-Atlantic aircraft. However, the petitioner's assertions do not overcome the *Handbook's* information that a pilot is an occupation that does not require a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish that the specific duties are so specialized and complex that the knowledge required to perform them is usually associated with a bachelor's degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.