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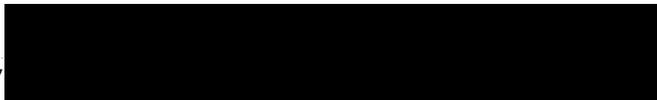


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FILE: SRC 03 055 51001 Office: TEXAS SERVICE CENTER

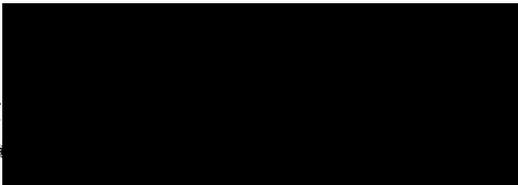
Date: SEP 19 2005

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter has been certified for review to the Administrative Appeals Office (AAO) in accordance with 8 C.F.R. § 103.4. The director's decision will be affirmed. The petition will be denied.

The petitioner is an aircraft maintenance company. It seeks to employ the beneficiary as a field maintenance engineer and to continue his classification 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 record failed to establish that the proffered position qualifies as 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.

As provided in 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 and notice of intent to deny (3) the petitioner's responses thereto; (4) the notice of decision; (5) Form I-290C, and (6) a letter from counsel and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 the petitioner described itself as an aircraft maintenance company, established in 1998, that has ten employees and gross annual income of \$300,000 at the end of 2002. The petitioner stated that it intends to employ the beneficiary for an additional three years as a field maintenance engineer, and provided the following description of the job:

Full-time Field Maintenance Engineer responsible for supervising, specifying, and overseeing highly technical field aviation procedures relating to the safety and maintenance of wide-body aircraft, utilizing detailed knowledge of state-of-the-art aviation technology and application of the theoretical systems of aviation technology so as to meet all applicable federal regulations for aircraft safety.

The job requires a bachelor's degree (or foreign equivalent) in aviation technology or a related field, the petitioner indicated, as well as two years of experience.

The director found that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). Based on the job description provided by the petitioner, the director determined that the proffered position was not that of an engineer. The duties of the position, the director determined, fall within the scope of an aircraft and avionics mechanic, or an avionics technician, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, 2002-03 edition, at 483 *ff.* The director quoted additional information in the *Handbook* indicating that a bachelor's degree in a specific specialty was not the normal minimum requirement for entry into a position as an aircraft and avionics mechanic or technician. Accordingly, the proffered position did not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the director explained that the DOL's *Dictionary of Occupational Titles (DOT)*, cited by the petitioner, does not contain sufficient information about the educational and other requirements of the occupation to establish that a baccalaureate degree is the industry standard for the proffered position, or that the complexity of the position requires a degree. As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the director indicated that the petitioner failed to establish that it normally requires a degree or its equivalent for the proffered position because the opinion letters submitted on behalf of the beneficiary and the petitioner's other field maintenance engineers in H-1B status were not sufficiently probative to establish that any of the employees had a combination of education and work experience equivalent to a baccalaureate degree. Lastly, the director stated that the proffered position did not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because no evidence was submitted in support of the petitioner's assertion that the position involved "complicated engineering problems" requiring baccalaureate level knowledge to resolve.

In her letter to the AAO following the certification of this case for review, counsel stated that the beneficiary was granted H-1B classification in February 2000 for employment in the same position for which an extension of H-1B status is being sought in the instant petition. Counsel submitted a copy of an interoffice memorandum from William Yates, CIS Associate Director for Operations, dated April 23, 2004 (*Yates Memorandum*), providing guidance for adjudicators in ruling on requests for extensions of previously approved petitions when there is no material change in the underlying facts. As counsel points out, the *Yates Memorandum* states that prior decisions should be given deference unless one of three

situations applies: (1) there was a material error in the previous approval, (2) there has been a substantial change in circumstances, or (3) there is new and material information that adversely affects the eligibility of the petitioner or the beneficiary. According to counsel, none of these situations applies to the instant petition. Counsel asserts that the beneficiary's petition to extend H-1B classification should therefore be approved.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti v. Reno, Inc., id.*, at 1165-66.

The AAO agrees with the director that the duties of the proffered position, as described by the petitioner, fall within the *Handbook's* occupational category of aircraft and avionics equipment mechanics or service technicians. As described in the *Handbook*, 2004-05 edition, at 532-33:

To keep aircraft in peak operating condition, aircraft and avionics equipment mechanics and service technicians perform scheduled maintenance, make repairs, and complete inspections required by the Federal Aviation Administration (FAA).

Many aircraft mechanics . . . specialize in preventive maintenance. They inspect engines, landing gear, instruments, pressurized sections, accessories – brakes, valves, pumps, and air-conditioning systems, for example – and other parts of the aircraft, and do the necessary maintenance and replacement of parts Large, sophisticated planes are equipped with aircraft monitoring systems, consisting of electronic boxes and consoles that monitor the aircraft's basic operations and provide valuable diagnostic information to the mechanic After taking an engine apart, mechanics use precision instruments to measure parts for wear and use x-ray and magnetic inspection equipment to check for invisible cracks. Worn or defective parts are repaired or replaced. Mechanics may also repair sheet metal or composite surfaces, measure the tension of control cables, and check for corrosion, distortion, and cracks in the fuselage, wings, and tail. After completing all repairs, they must test the equipment to ensure that it works properly.

Some mechanics work on one or many different types of aircraft, such as jets, propeller-driven airplanes, and helicopters. Others specialize in one section of a particular type of aircraft, such as the engine, hydraulics, or electrical system In small, independent repair shops, mechanics usually inspect and repair many different types of aircraft.

. . . . Avionics technicians repair and maintain components used for aircraft navigation and radio communications, weather radar systems, and other instruments and computers that control flight, engine, and other primary functions

The *Handbook* describes the educational requirements of the occupation as follows:

The majority of mechanics who work on civilian aircraft are certificated by the FAA as “airframe mechanic,” “powerplant mechanic,” or “avionics repair specialist.”

The FAA requires at least 18 months of work experience for an airframe, powerplant, or avionics repairer’s certificate. For a combined A & P [airframe and powerplant] certificate, at least 30 months of experience working with both engines and airframes is required. Completion of a program at an FAA-certified mechanic school can substitute for the work experience requirement Most airlines require that mechanics have a high school diploma and an A & P certificate.

Although a few people become mechanics through on-the-job training, most learn their job in one of about 200 trade schools certified by the FAA. About one-third of these schools award two- and four-year degrees in avionics, aviation technology, or aviation maintenance management.

Handbook, 2004-05 edition, at 533-34. Thus, it is clear that a baccalaureate degree from a U.S. college or university, or its equivalent from a foreign university, is not the normal minimum requirement for entry into the occupational field of aircraft and avionics equipment mechanics or service technicians. Accordingly, the AAO agrees with the director that the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the director correctly pointed out that the *DOT*, *supra*, is not a reliable guide as to the minimum educational requirements of a given occupation. The *DOT*’s SVP (“specific vocational preparation”) rating indicates the total number of years of vocational preparation required for a particular position, but does not specify how those years must be divided among training, formal education, and experience. Moreover, an SVP rating does not specify the particular type of degree, if any, that a particular position requires. There is no other evidence in the record demonstrating that a degree requirement in a specific specialty is common to the petitioner’s industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2). Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor’s degree in a specific specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner argues that it has a history of requiring a baccalaureate degree or its equivalent for the proffered position as evidenced by the opinion letters in the record, each of which asserts that the work experience and educational background of the beneficiary and five other field maintenance engineers employed by the petitioner in H-1B status is equivalent to a baccalaureate degree in aviation maintenance, or aircraft mechanics, from a U.S. college or university. As the director correctly explained in his decision, however, the opinion letters were not supported by any documentary evidence and lacked any meaningful assessment as to how the experience gained by the individuals in working for the petitioner and prior employers in positions reflecting the duties of aircraft and avionics equipment mechanics or service

technicians – positions which the *Handbook* clearly states do not require a baccalaureate degree or its equivalent – together with their limited or non-existent formal educations, is equivalent to a baccalaureate degree. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO agrees with the director that the opinion letters are not persuasive evidence that the petitioner normally requires its field maintenance engineers to have a baccalaureate degree or its equivalent. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not qualify as a specialty occupation under the fourth alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the evidence of record does not establish that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Counsel argues on appeal that because the California Service Center approved the previous nonimmigrant visa petition on behalf of the beneficiary in 2000, and there has been no material change in the underlying facts, the instant petition for an extension of the beneficiary's H-1B classification should be similarly approved. If the prior petition was approved based on evidence substantially similar to the evidence submitted in this proceeding, however, the approval of the prior petition would have been erroneous. CIS is not required to approve petitions when eligibility has not been demonstrated merely because of a prior approval 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. *See Sussex Eng'g. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The record in this proceeding does not establish that the proffered position meets the statutory definition of a specialty occupation under section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The director's decision is affirmed. The petition is denied.