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DEC 05 2008

FILE: LIN 05 186 51461 Office: NEBRASKA SERVICE CENTER Date:

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:

[REDACTED]

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, Chief  
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 aircraft ground handling. It seeks to employ the beneficiary as an aircraft maintenance supervisor. 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 finding that the proposed position is not a specialty occupation. Counsel submitted a timely appeal.

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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter;

and (5) Form I-290B and the appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an aircraft maintenance supervisor. 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 RFE. According to this evidence, the beneficiary would perform duties as follows: oversee all aspects of aircraft maintenance for customers; ensure airworthiness of customers' flights and corrective action plans for maintenance defects; organize manpower and equipment; supervise and coordinate activities of mechanics who maintain and repair aircraft and aircraft engines; inspect work to maintain standards and quality; and supervise workers who provide the aircraft with fuel, lubricants, and coolants. For the proposed position the petitioner requires a bachelor's degree with a major in aviation.

The director denied the petition. He stated that the *Occupational Information Network (O\*Net)* and the Department of Labor's *Occupational Outlook Handbook (the Handbook)* indicate that the proposed position, which is described as a first-line supervisor/manager of mechanics in the *O\*Net* and as aircraft and avionics equipment mechanics and service technicians in the *Handbook*, does not normally require a bachelor's degree in a specific academic field. The director found the affidavit from Professor Swami Karunamoorthy unpersuasive in establishing the proposed position as a specialty occupation. According to the director, the petitioner did not show that it normally requires a specific degree or its equivalent for the proposed position or that other companies in the industry require a baccalaureate degree in a specific academic discipline for an aircraft maintenance supervisor. The director found the beneficiary's duties described abstractly with no indication of the level of complexity and with little insight of day-to-day duties. According to the director, the petitioner's response to the RFE added new knowledge requirements to the position, which may have materially changed the initial job description. The director concluded that the petitioner did not demonstrate that the beneficiary's duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On appeal, counsel states that the *Dictionary of Occupational Titles (DOT)* indicates that an aircraft maintenance supervisor requires a baccalaureate degree. Counsel states that the *Handbook's* "Aircraft and Avionics Equipment Mechanics and Service Technician" classification is not appropriate for the offered position, as it relates to a mechanic, not a supervisor. Counsel states that the petitioner is an affiliate of Swissport International Ltd., a company that services more than 70 million passengers and provides ramp handling for over 2 million aircraft. Counsel states that the beneficiary must be knowledgeable about flight loads, g-forces, velocity-load factor diagrams, basic airframe and powerplant knowledge on maintenance, aerodynamics, fluid mechanics, solid mechanics, engineering mechanics, aircraft structures design, composite materials, non-destructive evaluation techniques, and Federation Aviation Regulations (FAR) procedures. Counsel submits job postings from other companies to establish its baccalaureate degree requirement. According to counsel, the regulations do not require the petitioner to establish that it normally requires a baccalaureate degree for the proposed position to qualify as a specialty occupation. Counsel states that the beneficiary is qualified to perform the duties of the proposed position.

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 proffered position is not a specialty occupation.

The AAO first considers 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 2006-2007 edition of the *Handbook*, a resource that the AAO routinely consults, 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 record contains information from the *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. A Specific Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, the *DOT's* information is not persuasive in establishing the proposed position as a specialty occupation.

The AAO finds that the director was correct in concluding that the beneficiary's duties are subsumed within the *Handbook's* occupational classification "Aircraft and Avionics Equipment Mechanics and Service Technicians," which is described as follows:

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, also called airframe mechanics, power plant mechanics, and avionics technicians, specialize in preventive maintenance. They inspect aircraft 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. They also maintain records related to the maintenance

performed on the aircraft. Mechanics and technicians conduct inspections following a schedule based on the number of hours the aircraft has flown, calendar days since the last inspection, cycles of operation, or a combination of these factors. In large, sophisticated planes equipped with aircraft monitoring systems, mechanics can gather valuable diagnostic information from electronic boxes and consoles that monitor the aircraft's basic operations. In planes of all sorts, aircraft mechanics examine engines by working through specially designed openings while standing on ladders or scaffolds or by using hoists or lifts to remove the entire engine from the craft. 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. They repair or replace worn or defective parts. Mechanics also may 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.

Mechanics specializing in repair work rely on the pilot's description of a problem to find and fix faulty equipment. For example, during a preflight check, a pilot may discover that the aircraft's fuel gauge does not work. To solve the problem, mechanics may troubleshoot the electrical system, using electrical test equipment to make sure that no wires are broken or shorted out, and replace any defective electrical or electronic components. Mechanics work as fast as safety permits so that the aircraft can be put back into service quickly.

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. *Airframe mechanics* are authorized to work on any part of the aircraft except the instruments, power plants, and propellers. *Powerplant mechanics* are authorized to work on engines and do limited work on propellers. *Combination airframe-and-powerplant mechanics*—called A&P mechanics—work on all parts of the plane except the instruments. Most mechanics working on civilian aircraft today are A&P mechanics. In small, independent repair shops, mechanics usually inspect and repair many different types of aircraft.

Avionics systems are now an integral part of aircraft design and have vastly increased aircraft capability. *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. These duties may require additional licenses, such as a radiotelephone license issued by the U.S. Federal Communications Commission (FCC). Because of the increasing use of technology, more time is spent repairing electronic systems, such as computerized controls. Technicians also may be required to analyze and develop solutions to complex electronic problems.

Counsel's assertion that the beneficiary's supervisory duties are not included within the classification "Aircraft and Avionics Equipment Mechanics and Service Technicians" is not convincing. The record

reflects that the beneficiary will oversee workers who perform the duties described in the *Handbook* as set forth above. The beneficiary's supervisory duties are also within this occupational classification. The *Handbook* reports that some mechanics have an inspector's authorization, which allows the mechanic to "certify work completed by other mechanics and perform required inspections," and it conveys that experienced aircraft mechanics may advance to lead mechanic (or crew chief), inspector, lead inspector, or shop supervisor positions. It is noted that the *Handbook* explains that jobs within the "Aircraft and Avionics Equipment Mechanics and Service Technicians" do not normally require a baccalaureate degree in a specific academic field. The *Handbook* states:

Most mechanics who work on civilian aircraft are certified by the FAA as an "airframe mechanic" or a "powerplant mechanic." Mechanics who also have an inspector's authorization can certify work completed by other mechanics and perform required inspections. Uncertified mechanics are supervised by those with certificates.

The FAA requires at least 18 months of work experience for an airframe or powerplant certificate. For a combined A&P 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. Applicants for all certificates also must pass written and oral tests and demonstrate that they can do the work authorized by the certificate. . . .

Although a few people become mechanics through on-the-job training, most learn their job in 1 of about 170 trade schools certified by the FAA. About one-third of these schools award 2-year and 4-year degrees in avionics, aviation technology, or aviation maintenance management.

FAA standards established by law require that certified mechanic schools offer students a minimum of 1,900 actual class hours. Coursework in schools normally lasts from 18 to 24 months and provides training with the tools and equipment used on the job. Aircraft trade schools are placing more emphasis on technologies such as turbine engines, composite materials—including graphite, fiberglass, and boron—and aviation electronics, which are increasingly being used in the construction of new aircraft. Additionally, employers prefer mechanics who can perform a variety of tasks.

....

Courses in mathematics, physics, chemistry, electronics, computer science, and mechanical drawing are helpful because they demonstrate many of the principles involved in the operation of aircraft, and knowledge of these principles is often necessary to make repairs. Courses that develop writing skills also are important because mechanics are often required to submit reports.

FAA regulations require current work experience to keep the A&P certificate valid. Applicants must have at least 1,000 hours of work experience in the previous 24 months or take a refresher course. As new and more complex aircraft are designed, more employers are requiring mechanics to take ongoing training to update their skills. Recent technological advances in aircraft maintenance necessitate a strong background in electronics—both for acquiring and for retaining jobs in this field. FAA certification standards also make ongoing training mandatory. . . .

Advances in computer technology, aircraft systems, and the materials used to manufacture airplanes have made mechanics' jobs more highly technical. Aircraft mechanics must possess the skills necessary to troubleshoot and diagnose complex aircraft systems. They also must continually update their skills with and knowledge of new technology and advances in aircraft technology.

As aircraft mechanics gain experience, they may advance to lead mechanic (or crew chief), inspector, lead inspector, or shop supervisor positions. Opportunities are best for those who have an aircraft inspector's authorization. In the airlines, where promotion often is determined by examination, supervisors sometimes advance to executive positions. Those with broad experience in maintenance and overhaul might become inspectors with the FAA. .

In conclusion, the AAO finds that the offered position is not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must show that a specific degree requirement is common to the industry in parallel positions among similar organizations. On appeal, counsel submits job postings from Lockheed Martin and AAR Corporation (Exhibit F) as evidence of the degree requirement in the industry. AAR Corporation does not require a bachelor's degree in a specific field; although Lockheed Martin requires a related degree from an accredited college or equivalent experience/combined education, one job posting is insufficient to establish that a baccalaureate degree in a specific discipline is the industry-wide requirement for an aircraft maintenance supervisor. The petitioner therefore fails to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to show that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. To establish this prong the record contains an affidavit from Professor Karunamoorthy. In the affidavit the professor discusses the knowledge required of an aircraft maintenance supervisor such as flight loads, g-forces, velocity-load factor diagrams, basic airframe and powerplant knowledge on maintenance, aerodynamics, fluid mechanics, solid mechanics, engineering mechanics, aircraft

structures design, composite materials, non-destructive evaluation techniques, and FAR procedures. The professor asserts that the duties of the proposed position require the beneficiary to hold a bachelor's or higher degree in aviation technology. The AAO finds that the knowledge requirements described by the professor do not require the attainment of a baccalaureate degree in a specific academic field. The knowledge requirements correspond to those of supervisors of aircraft and avionics equipment mechanics and service technicians, and a flight engineer. It is noted that the AAO has already described the duties of and the knowledge and educational requirements of aircraft and avionics equipment mechanics and service technicians. Flight engineers must have knowledge of flight and aerodynamics, basic meteorology with respect to engine operations, center of gravity computations, airplane loading, airplane procedures and engine operations with respect to limitations, and mathematical computation of engine operations and fuel consumption. See FAR, Part 63, Certification: Flight Crewmembers Other Than Pilots, Subpart B -- Flight Engineers, Section 63.35. Knowledge Requirements. The FAR indicates that flight engineers are not required to possess a bachelor's degree in a specific discipline. See FAR, Part 63, Certification: Flight Crewmembers Other Than Pilots, Subpart B -- Flight Engineers, Sections 63.31, 63.33, 63.35, 63.37, 63.39. The professor does not submit or cite to industry data, studies, or other objective criteria in support of his opinion. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As the opinion materially differs from the information in the *Handbook*, a compilation of nationwide data gathered from studies, industry data, questionnaires, and interviews, and is not supported by objective criteria, the AAO will discount the opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record establishes that the proposed duties do not exceed the scope of a typical supervisor of aircraft and avionics equipment mechanics and service technicians or a typical flight engineer. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a supervisor of aircraft and avionics equipment mechanics and service technicians and a flight engineer and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in aviation technology or a related field. The opinion of the professor is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO has already found that the professor's affidavit fails to establish this criterion. The *Handbook* reflects that many of the duties of the proposed position reflect those of a typical supervisor of aircraft and avionics equipment mechanics and service technicians. Other duties of the proposed position parallel those of a typical flight engineer. A supervisor of aircraft and avionics equipment mechanics and service technicians and a flight

engineer are occupations that do not require a baccalaureate degree in a specific academic field. As such, the evidence of record fails to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate degree in a specific specialty. The petitioner thus fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.