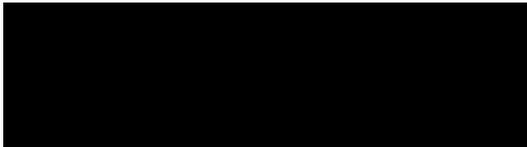


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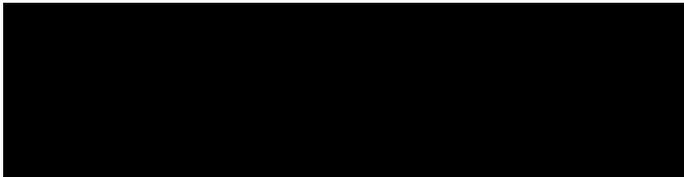
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FILE: SRC 04 159 50245 Office: TEXAS SERVICE CENTER Date: JUN 08 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

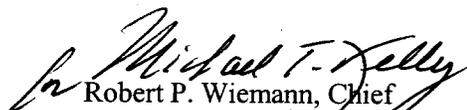
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Chief
Administrative Appeals Office

DISCUSSION: The director 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 an avionics repair and inspection station that seeks to employ the beneficiary as an avionics engineer. 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 basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request for evidence; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Counsel submitted the Form I-290B on September 29, 2004, and marked the box at section two of the form to indicate that a brief and/or evidence would be sent within 30 days. The AAO never received this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to counsel's office on March 30, 2006, requesting that the brief and/or additional evidence be sent within five business days.

Counsel has not responded to the AAO's facsimile. Accordingly, the AAO deems the record complete and ready for adjudication.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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:

- (I) 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 proposed position.

The petitioner’s May 6, 2004 letter of support divided the duties of the proposed position into three broad categories: (1) sales engineering, (2) general avionics engineering, (3) and acting as a liaison to engineering manufacturers. Under the sales engineering category, the petitioner indicated that the beneficiary would formulate proposals for sales, testing, installation, and service on avionics equipment, based upon his consultations with customers and prospective customers, taking into account the technical and performance parameters of their proposed operations, age and condition of the aircraft, budgets, and other relevant information. Under the general avionics engineering category, the petitioner indicated that the beneficiary would direct the installation, testing, service, and maintenance activities of the petitioner, with a view toward error-free installations and flawless operations. This would include devising and administering testing/inspection procedures and protocols, specific trouble-shooting in the case of reported performance problems, and administering a system for the tracking of service and maintenance intervals. The beneficiary would perform most complex equipment repair functions, in consultation with the engineering staff of manufacturers. Under the liaison category, the beneficiary would maintain close contact with equipment manufacturers’ engineering personnel so as to facilitate the necessary communication regarding technical issues regarding performance characteristics, service life, inspection intervals, and specified problems. The beneficiary would be required to read industry literature regularly so as to remain abreast of development and technological advances in the field, identify new sources of supply, and related functions.

In determining whether a proposed 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The director’s request for evidence requested additional information to substantiate the petitioner’s contention that the proposed position qualifies for classification as a specialty occupation. The director noted that the duties of the proposed position are similar to those of an avionics technician, as that position is described in the *Handbook*.

In its August 16, 2004 response, the petitioner stated that the duties of the proposed position were similar to those of sales engineers. The petitioner stated that although it had divided the duties into three categories, each of the three categories were similar to the duties of sales engineers.

In her denial, the director stated that “[t]he Service is not persuaded by the comparison to sales engineers.” The director continued:

Sales Engineers generally work with very complex and technical products such as industrial machinery and equipment, measuring and controlling devices, or electronic and other electrical equipment. You have indicated that your company specializes in [the] installation of advanced avionics products. This appears to be very different than the [*Handbook's*] description of sales engineers. While the position clearly entails some sales duties, you have failed to prove that a degree in engineering is required to sell radar, transponders, auto pilots, GPS and ADF's, etc., to aircraft owners and then install or supervise the installation.

The director likened the duties of the proposed position to those of aircraft and avionics equipment mechanics and service technicians who, according to the *Handbook*, are not required to possess a baccalaureate or equivalent degree.

On appeal, counsel contends that the director erred in denying the petition. Counsel asserts that the proposed position is in fact that of a sales engineer, that the director ignored an array of duties beyond the scope of avionics technicians, that the director sought to minimize the complexity of avionics equipment, and that the director described a position substantially less complex than the position proposed in the petition.

Upon review of the record, the AAO finds that the petitioner has not established that the proposed position qualifies for classification as a specialty occupation. The AAO agrees with the director that the position proposed in this petition is very similar to that of an avionics technician, as that position is described in the *Handbook*.

However, the AAO will first address counsel's contention that the petition should be approved because it is actually that of a sales engineer. The AAO agrees with counsel that some of the proposed duties mirror those of sales engineers, and that many sales engineer positions qualify as specialty occupations. However, designation of a position as a sales engineer does not automatically qualify it for classification as a specialty occupation. While the *Handbook* does state that a bachelor's degree in engineering is usually required to become a sales engineer, it also specifically states that “some workers with previous experience in sales combined with technical experience or training sometimes hold the title of sales engineer.”

It is this latter category of sales engineers whose duties the sales engineering-related duties of the proposed position mirror most closely. The beneficiary's previous work experience supports this finding as, according to one of the work experience letters, the beneficiary held a sales engineering position from October 1991 until at least the time the instant petition was filed, a position for which he was qualified based on three years of work experience.

Thus, even if the AAO agreed with counsel that the proposed position was mainly that of a sales engineer, which it does not, the position would not qualify for classification as a specialty occupation on that basis.¹

Rather, the AAO agrees with the director that the duties of the proposed position are similar to those of aircraft and avionics equipment mechanics and service technicians, as those positions are described in the *Handbook*:

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.

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

¹ The AAO notes that if the proposed position were the type of sales engineering position described in the *Handbook* requiring a bachelor's degree in engineering, the beneficiary would not be qualified. According to the evaluation of work experience contained in the record, the beneficiary possesses the equivalent of a bachelor's degree in electronic technology, with a concentration in avionics.

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.

The AAO finds that these duties are closely aligned to those of the proposed position. Accordingly, it turns to the *Handbook's* discussion of the qualifications necessary for entry into the field. The *Handbook* does not indicate that a baccalaureate degree, or its equivalent, is the normal preparation for entry into this occupational grouping:

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.

The *Handbook* states that coursework normally lasts between 18 and 24 months.

Accordingly, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

However, no evidence to satisfy this prong has been submitted. Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. There is no evidence in the record that would demonstrate that the proposed position is more complex or unique than aircraft and avionics equipment mechanic and service technician positions in other, similar organizations. The position proposed in the petition appears similar to aircraft and avionics equipment mechanic and service technician positions as described in the *Handbook*, which do not normally require a four-year degree.

Accordingly, the petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The record does not demonstrate, nor has counsel or the petitioner contended, that the proposed position qualifies as a specialty occupation under this criterion.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 the specialty occupation.

The evidence of record does not distinguish the proposed duties from those of the general occupational category of aircraft and avionics equipment mechanics and service technicians, for which the *Handbook* indicates no usual association with a bachelor's degree or its equivalent. Therefore, the proposed position does not qualify as a specialty occupation under the fourth criterion.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation, and the petition was properly denied.

The petition may not be approved for another reason. Beyond the decision of the director, the AAO has determined that the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an 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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. While the record contains an evaluation stating that the beneficiary's work experience is equivalent to a bachelor's degree in electronic technology with a concentration in avionics, the evaluation is not based upon a

degree that the beneficiary earned abroad. Rather, it is based upon his work experience. Accordingly, he does not qualify under the second criterion.

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as there has been no showing that the person issuing the evaluation has the 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.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the evaluation was not based upon a degree, it was based upon work experience.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 occupation²;
- (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.

Counsel's submission traces the beneficiary's work experience from 1988 onward, for a period of sixteen years (the petition was filed in May 2004). The AAO's next line of inquiry is therefore to determine whether at least twelve years of this work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, whether it was gained while working with

² *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

peers, supervisors, or subordinates who held a degree or its equivalent in sales engineering or avionics engineering, and whether the beneficiary achieved recognition of expertise in the specialty evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

According to the record, the beneficiary has worked in Venezuela as an avionics installer and repairer for Aerocentro de Services, C.A. since 1988. He worked in Venezuela as an aircraft avionics manager from June 21, 1988 until October 31, 1992. The record also demonstrates that the beneficiary presently holds two avionics manager positions in Venezuela: he has worked for Heli Center since November 1992, and Pema, C.A. since October 1991. However, none of these letters establish that the work experience included the theoretical and practical application of specialty knowledge required by sales engineers or avionics engineers, that it was gained while working with peers, supervisors, or subordinates who held degrees, or that the beneficiary achieved recognition of expertise in the field as described at section (v) of 8 C.F.R. § 214.2(h)(iv)(D)(5).

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Therefore, the beneficiary does not qualify to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The proposed position does not qualify for classification as a specialty occupation and the beneficiary does not qualify to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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.