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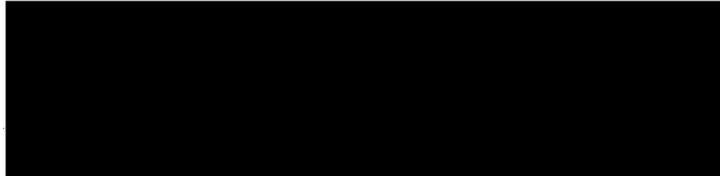
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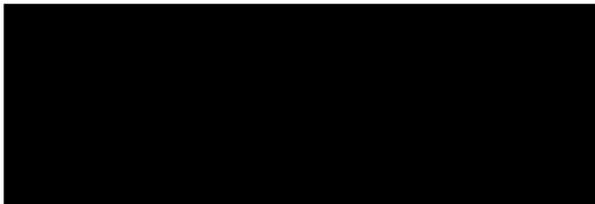
FILE: SRC 02 244 51783 Office: TEXAS SERVICE CENTER Date: **SEP 21 2007**

IN RE: Petitioner:  
Beneficiary:



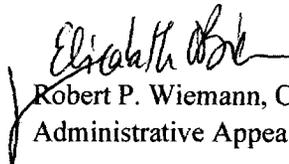
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All 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, Texas Service Center denied the Form I-129 nonimmigrant visa petition, which the petitioner had filed to extend the H-1B employment of the beneficiary. The Administrative Appeals Office (AAO) dismissed a subsequent appeal on April 21, 2003, a motion to reopen on June 3, 2004 and a motion to reconsider on May 16, 2005. The petitioner and the beneficiary filed a complaint in the U.S. District Court for the Northern District of Georgia, Rome Division, seeking relief requiring Citizenship and Immigration Services (CIS) to approve the beneficiary's H-1B petition. *Phoenix Air Group, Inc., and Rodolfo Guillermo Pena and Hector De Sousa Ribeiro v. United States Department of Homeland Security, Citizenship and Immigration Services*, No. 4 06 CV 147 HLM (filed June 27, 2006). Upon review, the AAO, on its own motion, reopened the proceeding to reconsider its previous decisions pursuant to 8 C.F.R. § 103.5(a)(5)(ii). On January 29, 2007, it issued a request for evidence to which the petitioner responded on June 18, 2007. The AAO will affirm its prior decision denying the petition.

The petitioner is a U.S. airline that owns and operates Learjets and Gulfstream G-159 turbo prop aircraft, and provides charter and air cargo services, as well as aircraft services to military and defense contractors. The petitioner employs approximately 100 persons. It seeks to extend its employment of the beneficiary as an aircraft pilot in command 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's August 21, 2002 request for evidence; (3) counsel's response to the director's request; (4) the director's October 11, 2002 denial of the petition; (5) the Form I-290B and supporting documentation; (6) the AAO's April 21, 2003 dismissal of the appeal; (7) counsel's May 27, 2003 Motion to Reopen; (8) the AAO's dismissal of the Motion to Reopen; (9) counsel's July 1, 2004 Motion to Reconsider; (10) the AAO's dismissal of the Motion to Reconsider; (11) the AAO's January 29, 2007 request for evidence; and (12) counsel's June 14, 2007 response to the AAO's request. The AAO reviewed the record in its entirety before reaching its decision.

The initial issue before the AAO is whether the petitioner's proffered position qualifies as a "specialty occupation."

The Immigration and Nationality Act (the Act) provides for the nonimmigrant classification of aliens coming temporarily to the United States to perform services in a specialty occupation. See section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101. Pursuant to the statutory definition at section 214(i) of the Act, 8 U.S.C. § 1184(i), the term "specialty occupation" means an occupation that requires:

- (1) the theoretical and practical application of a body of highly specialized knowledge, and
- (2) 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, a 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary's services as an aircraft pilot in command. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's July 1, 2002 letter in support of the petition; and counsel's June 14, 2007 response to the AAO's request for evidence, including two letters from the petitioner, both dated June 7, 2007.

At the time of filing, the petitioner stated that the proffered position would require the beneficiary to:

- Pilot airplanes to transport passengers, mail or freight or for other commercial purposes;
- Review a ship's papers to ascertain factors such as load, weight, fuel supply, weather conditions, flight route and schedule;
- Order changes in the fuel supply, load, route or schedule to ensure the safety of the flight;
- Pilot airplanes to destinations, adhering to flight plans, and the regulations and procedures of the federal government, company, and airports; and
- Log information, such as time in flight, altitude flown and fuel consumed.

These duties, the petitioner contended, require knowledge, training and experience that either exceed or are the equivalent of a baccalaureate degree in aeronautical science/engineering.

In response to the AAO's January 29, 2007 request for evidence, counsel submits an amended description of the duties associated with the proffered position. The duties described at the time of filing are not, counsel states, the only duties to be performed by the beneficiary. Citing information provided in the petitioner's June 7, 2007 letters, counsel contends that, in addition to the duties described at the time of filing, aircraft pilots in command are also required to:

- Manage their aircraft, including all aspects of maintenance for their aircraft;
- Manage personnel, including fellow pilots, flight attendants and mechanics when posted to remote bases;
- Make business decisions on behalf of Phoenix Air when dealing with clients face-to-face;
- Understand and apply foreign and U.S. military protocol;
- Participate in covert military operations;
- Participate in military training operations;
- Understand and apply all U.S. Federal Aviation Regulations and Phoenix Air operational regulations;
- Understand and apply all International Civil Aviation Organization (ICAO) regulations;
- Understand complex electronic payload systems and other systems on board G-1 aircraft; and
- Understand complex special mission electronic equipment that may be onboard the aircraft during certain types of operations.

Counsel states that the duties to be performed by the beneficiary are not duties that are routinely performed by aircraft pilots and that aircraft pilots who work at U.S. military bases under the petitioner's defense contracts are required to take management responsibility for all operations at their location and make day-to-day business decisions on behalf of the petitioner. In its June 7, 2007 letters, the petitioner states that aircraft pilots in command are expected to be much more than just pilots, they must be skilled aviators, office managers, public relations managers, maintenance managers, systems managers and that, away from base, they must be able to manage an aircraft and associated crewmembers in a "nonsupervised autonomous manner." The petitioner identifies the beneficiary as one of its pilots stationed at the U.S. Air Force base in Elmendorf, Alaska who transports military and other federal personnel to a military facility that is part of the U.S. Theater Ballistic Missile Defense Program.

The AAO notes that the purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Therefore, when responding to a request for evidence, a petitioner may not offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

In the present case, the amended description of the proffered position that counsel provides in response to the AAO's request for evidence does not offer additional detail about the nature of the duties originally listed by

the petitioner. Instead, it introduces new duties that expand the position's responsibilities significantly, including managing personnel and maintenance; participating in military training operations and covert military operations; understanding the electronic payload and other systems on board the aircraft, and the special electronic equipment onboard the aircraft during certain unidentified operations; making business decisions on behalf of the petitioner and understanding and applying foreign and U.S military protocol.

The AAO acknowledges that the petitioner's July 1, 2002 letter in support of the petition indicated that it provided aircraft services to the U.S. military and defense contractors, including testing and evaluation support for the U.S. Navy Aegis program and advanced air-to-air Electronic Attack training for the U.S. Air Force's front line weapons systems. However, the duties of the proffered position listed at the time of filing did not reflect that the beneficiary would be involved in any aspect of its business other than the piloting of Gulfstream aircraft to transport passengers, mail or freight or for other commercial purposes. While the AAO reaches no conclusion as to which description is the more accurate recounting of the proffered position's duties, the new claims that the proffered position requires the beneficiary to participate in such activities as covert military operations and making business decisions on behalf of the petitioner will not be considered in this proceeding. The AAO will accept the expanded description of the proffered position offered in response to its request for evidence only as it relates to the duties listed by the petitioner at the time of filing.

Therefore, for its analysis of the proffered position under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will rely on the duties first described by the petitioner and the following duties listed by counsel in his June 14, 2007 response: understand and apply all U.S. Federal Aviation regulations, as well as those of the petitioner; and understand and apply all ICAO regulations, both of which directly relate to the duties listed at the time of filing.

The AAO notes that one of the petitioner's June 7, 2007 letters expresses concerns for the safety of the beneficiary should he return to Venezuela. Such concerns, however, are outside the scope of this proceeding. They would be appropriately raised in the context of an asylum claim under section 208 of the Act, 8 U.S.C. § 1158 or in removal proceedings before an immigration judge.

The AAO now turns to a consideration of the duties of the proffered position.

To determine whether the duties just described are those of 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The duties of the proffered position establish it as that of an aircraft pilot, employment discussed by the 2006-2007 edition of the *Handbook* under the occupational title of aircraft pilots and flight engineers. With regard to the preparation required for employment as a pilot, the *Handbook* reports the following:

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 . . . . 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.

To fly during periods of low visibility, pilots must be rated by the FAA to fly by instruments. Pilots may qualify for this rating by having the required hours of flight experience, including 40 hours of experience in flying by instruments; they also must pass a written examination on procedures and FAA regulations covering instrument flying and demonstrate to an examiner their ability to fly by instruments. Requirements for the instrument rating vary depending on the certification level of [the] flight school.

Airline pilots must fulfill additional requirements. Pilots must have an airline transport pilot's license. Applicants for this license must be at least 23 years old and have a minimum of 1,500 hours of flying experience, including night and instrument flying, and must pass FAA written and flight examinations. Usually, they also have one or more advanced ratings depending on the requirements of their particular job . . . .

...

Although some small airlines 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. [*Handbook*, page 630].

Based on the above discussion, the AAO concludes that the proffered position of aircraft pilot would not impose a degree requirement on the beneficiary. While the *Handbook* reports that employers seeking aircraft pilots prefer to hire college graduates and that many are making a college degree a job requirement, employers' preference for degreed job candidates is not synonymous with the normally required language of the first criterion. Employer preference indicates only that employers find degrees desirable. It is, therefore, insufficient to establish that a baccalaureate or its equivalent is normally the minimum requirement for entry into the particular position. Moreover, the *Handbook* does not indicate that employers seeking degreed pilots

require these individuals to hold degrees in fields that are directly related to their employment, as required for classification as a specialty occupation. In that the *Handbook* does not indicate that a baccalaureate or higher degree in a specific specialty is the normal requirement for entry-level employment as an aircraft pilot, the AAO finds that the position does not qualify as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching this conclusion, the AAO has considered the materials submitted by the petitioner from the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The petitioner contends that the Specific Vocational Preparation (SVP) codes assigned to the occupation of chief pilot and commercial airline pilot establish that the performance of these positions requires the minimum of a baccalaureate degree or its equivalent. However, the *DOT* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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.

The AAO has also reviewed the record material published by the Air Line Pilots Association; the Federal Aviation Administration (FAA) regulations governing the issuance of airline transport pilot certificates and ratings; a 1999 FAA advisory circular on certification for pilots, and flight and ground instructors; a 1998 FAA publication entitled "Airline Transport Pilot and Aircraft Type Rating, Practical Test Standards for Airplane;" the "G-I Training Manual;" the Gulfstream I Pilot Checklist; and the Gulfstream I cockpit diagram. While the AAO finds this evidence to establish that aircraft pilots undergo significant training for FAA licensure, it does not demonstrate that such licensure requires a baccalaureate or higher degree in a directly related field, as required for classification as a specialty occupation. Similarly, the materials related to the G-I aircraft are proof that extensive preparation is needed for its operation, not that such preparation requires a degree in a specific specialty.

The AAO also notes the petitioner's contention that the training required to perform the duties of an aircraft pilot in command is at least the equivalent of a bachelor's degree in aeronautical science/engineering. However, a petitioner may establish a proffered position as a specialty occupation on the basis of educational equivalency only when a specific degree does not exist in the occupational field. *Tapis Int'l v. INS*, 94 F. Supp. 2d (D. Mass. 2000). As the petitioner indicates that the duties of the proffered position may be performed by someone with a degree in aeronautical science/engineering, the AAO will not consider whether the training required for FAA certification as an airline transport pilot is equivalent to or exceeds a bachelor's degree in an academic field directly related to the proffered employment. Moreover, the petitioner has submitted no documentation to support its claim regarding the degree equivalency provided by fulfilling FAA certification requirements. Going on record without supporting documentation is not sufficient to meet 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)).

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either that a specific degree requirement is common to the industry in parallel positions among similar organizations, or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty.

In support of its motions to reopen and reconsider, the petitioner submitted position descriptions and requirements for pilot positions at Delta Air Lines, Inc., Southwest Airlines, American Eagle, FedEx Express, and American Express; and material from the websites of Florida International University (FIU) and Southwest Texas Junior College on careers in aeronautics. The record also includes an FIU listing of colleges and universities providing degrees in aeronautics and materials from the websites of Embry-Riddle Aeronautical University, Arizona State University East, Auburn University, the College of Aeronautics and Daniel Webster College describing their aeronautics programs. The AAO finds these materials to establish that U.S. air passenger and air transport organizations, national and regional, either prefer or require degreed pilots. However, the discussion of the position of pilot at Delta Air Lines, Southwest Airlines, American Eagle, FedEx Express and American Express do not establish that the duties of a pilot within these organizations are parallel to those of the proffered position. Only the description of the position of chief pilot at American Express indicates the specific duties to be performed, and these duties differ significantly from those described by the petitioner at the time of filing. The FIU and Southwest Texas websites, which list the educational requirements and salaries for a range of jobs within the U.S. aeronautics industry, also fail to offer a description of the duties associated with the various types of employment listed. Moreover, the organizations relied upon by the petitioner to establish an industry-wide degree requirement are not similar to the petitioner, a U.S. airline providing charter and air cargo services, with 100 employees. The degree requirements or preferences expressed are those of major national or regional airline carriers, a national air cargo and courier enterprise, and a credit, travel and financial management business. Accordingly, the record does not establish that a degree requirement is the norm within the petitioner's industry, in parallel positions among similar organizations, as required by the first prong of the criterion. The AAO also notes that, although the submitted materials demonstrate that Delta Air Lines, Southwest Airlines, American Eagle, FedEx Express and American Express require or prefer their pilots to hold degrees, they do not indicate that the degree be held in a directly-related field, as required for classification as a specialty occupation. The FIU and Southwest Texas websites also fail to report a specific degree requirement or preference for employment as a pilot within the aeronautics industry.

In response to the AAO's request for evidence the petitioner has submitted a June 12, 2007 letter from a professor of aeronautical science at Embry-Riddle Aeronautical University in Daytona Beach, Florida in which he states that he has been requested to offer an "industry standard" letter verifying that the position of pilot in command of a Gulfstream I aircraft flown by the petitioner requires a baccalaureate degree. However, the submitted letter does not address the hiring practices of the petitioner's industry but instead responds to the second prong of the criterion, focusing on the unique nature of the proffered position.

The professor states that performing as a pilot in command of an aircraft does not in itself require a baccalaureate degree, but that the proffered position requires an understanding of systems on board the Gulfstream I, the ability to manage and supervise other crewmembers and maintenance personnel, make business decisions on behalf of the petitioner and be aware of U.S. and ICAO regulations and operating

procedures. The professor also indicates that an important element to the degree requirement for the proffered position is the petitioner's business model. He indicates that the petitioner's pilots must be skilled aviators, office managers, public relations managers, aircraft maintenance managers and systems managers, and must be able to operate and manage an aircraft and associated crewmembers at home and away from home in a non-supervised autonomous manner. While the AAO acknowledges the professor's expertise in the field of aeronautical engineering and his experience as a pilot, it notes that his opinion is based on the description of the proffered position's duties provided by the petitioner in response to the AAO's request for evidence, the majority of which, as previously discussed, the AAO does not accept for the purposes of determining whether the proffered position qualifies as a specialty occupation. In that the professor's opinion does not rely on the duties described by the petitioner at the time of filing, it does not establish the proffered position as a specialty occupation on the basis of its complexity or unique nature.

Moreover, the AAO finds the professor's opinion to lack an adequate factual foundation. It notes that the opinion does not indicate that, in reaching his conclusions concerning the proffered position, the professor reviewed the petitioner's operations or interviewed the petitioner regarding the position's requirements. Instead, the professor's opinion appears to rely upon the petitioner's response to the AAO's request for evidence, paraphrasing or using language identical to that found in the petitioner's June 7, 2007 letter and, thereby, undermining its evidentiary value. The AAO in its discretion may use statements submitted as expert testimony as advisory opinions. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept that evidence or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 792 (Comm. 1988). Accordingly, the record does not establish the proffered position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine a petitioner's ability to meet the third criterion, CIS often reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In the present case, the petitioner has offered no evidence to demonstrate that it normally requires the minimum of a baccalaureate degree when filling the proffered position. Therefore, the petitioner has not established the proffered position as a specialty occupation based on its normal hiring practices.<sup>1</sup>

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<sup>1</sup> The AAO notes that the Form ETA 750, Application for Alien Employment Certification, underlying the Form I-140, Immigrant Visa Petition (A98 543 894) filed by the petitioner on behalf of the beneficiary does not indicate that the petitioner finds the duties of an aircraft pilot in command to require the minimum of a baccalaureate degree in a directly-related field. Instead, it states that the beneficiary must hold an FAA Airline Transport Pilot Certificate and have at least 5,000 flight hours in G-159 turbo prop aircraft. The record does not establish that an air transport pilot certificate and 5,000 flight hours are the equivalent of a baccalaureate degree in aeronautical science. The petitioner has not attempted to establish such equivalency. Further, as discussed above with regard to *Tapis Int'l v. INS*, the petitioner may not establish the position as a specialty occupation based on educational equivalency, as a degree in aeronautical science/engineering will

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of its 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. Therefore, to establish the proffered position as a specialty occupation, the petitioner must distinguish the duties to be performed by the beneficiary from those typically performed by aircraft pilots, employment that the *Handbook* indicates does not normally impose a degree requirement.

The duties of the proffered position, as described by the petitioner at the time of filing, are those routinely performed by aircraft pilots. Although as previously discussed, the petitioner has submitted a letter from a professor of aeronautical engineering at Embry-Riddle Aeronautical University that finds the proffered position's duties to require a baccalaureate degree in aeronautics or aeronautical science, the duties on which the professor bases his opinion are not established as those of the proffered position. The AAO, instead, finds the professor's opinion, which states that the position of an aircraft pilot in command does not require a baccalaureate degree, to undermine the petitioner's assertion that the proffered position may be established as a specialty occupation based on the duties listed at the time of filing. As the record does not demonstrate that the proffered position would require the beneficiary to have greater knowledge or skill than that possessed by a typical aircraft pilot, it does not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Although the record does not establish the proffered position as a specialty occupation, the AAO will, nevertheless, proceed with an analysis of the beneficiary's qualifications to perform the duties of a specialty occupation under the regulatory requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C).

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such a degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

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prepare a worker for a career as a pilot. The duties listed on the Form ETA 750 are identical to those listed by the petitioner at the time of filing in the present case.

- (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.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may establish that the beneficiary holds the equivalent of a U.S. baccalaureate or higher degree by submitting evidence to meet one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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 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 holds an engineering degree from Carabobo University in Venezuela. However, the petitioner has not submitted any evaluation of the beneficiary's foreign academic record to establish it as the equivalent of a

U.S. baccalaureate or higher degree required by the proffered position. Instead, it submits an evaluation from the Foundation for International Services (FIS), Inc. in Lynnwood, Washington, which finds the beneficiary's employment experience to be the equivalent of a bachelor's degree in aeronautical sciences with a specialization in aviation management from a regionally accredited U.S. college or university. The evaluation is based on a letter from the petitioner describing the beneficiary's employment from 1999 to the present and the beneficiary's resume.

To establish that a beneficiary's employment experience provides him or her with the equivalent of a baccalaureate degree, a petitioner must submit an evaluation of that experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). An evaluation service, like the FIS, may only evaluate a beneficiary's foreign academic credentials. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Accordingly, the AAO will not accept the FIS evaluation of the beneficiary's employment experience.

The AAO also notes that the FIS evaluation states it is based on the beneficiary's resume and a letter from the petitioner describing the beneficiary's employment experience from 1999 to the present. In that the FIU's evaluation was completed without a review of any documentary evidence establishing the beneficiary's prior employment and is not accompanied by the employment letter it indicates was provided by the petitioner, it also lacks a factual foundation to support its findings. An evaluation by a credentials evaluation organization serves CIS as an advisory opinion only. Where an evaluation is in any questionable, the AAO may discount it or give it less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

As the record provides no other evidence that would allow the petitioner to establish the beneficiary's qualifications under the first four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO will conduct its own evaluation of the beneficiary's training and employment history under the requirements of the fifth and final criterion. When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

At the time of filing, the petitioner submitted documentation that the beneficiary's holds an FAA airline transport pilot certificate and was previously licensed as an airline transport pilot in Venezuela. It also

provided a list of the training courses the beneficiary has completed related to his profession and a copy of his resume. The AAO notes that the beneficiary's resume indicates that he has been employed as a pilot since 1976, first in Venezuela and then in the United States.

The AAO finds that the combination of the beneficiary's 30 years of employment experience along with the skills required to obtain an FAA airline transport certificate provide the beneficiary with the equivalent of four years of college-level training in a related field. However, the record provides no documentation that would establish that the beneficiary's experience was gained while working with peers, supervisors or subordinates who had degrees or the equivalent in directly-related academic fields or that his expertise in the field of aeronautics has received the type of recognition required by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Therefore, the record fails to establish that the beneficiary is qualified to perform the duties of a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO acknowledges that the petitioner has been employing the beneficiary as an H-1B worker in the proffered position, based on a previously approved petition. CIS' approval of the earlier petition does not, however, establish a basis for approving the present Form I-129.

CIS is not bound to approve applications or 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). The AAO notes that a petition approved on the basis of evidence substantially similar to the evidence contained in this record of proceeding would have been erroneous. Further, each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d). The AAO's authority over the director is comparable to the relationship between a court of appeals and a district court. Even if a director had approved a previous nonimmigrant petition on behalf of a beneficiary, the AAO would not be bound to follow that decision. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D.La.), *aff'd*, 248 F.3d 1139 (5<sup>th</sup> Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

For reasons previously discussed, the petitioner has not established the proffered position as a specialty occupation or the beneficiary as qualified to perform the duties of a specialty occupation. 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 met that burden. Accordingly, the AAO will affirm its prior decision.

**ORDER:** The decision of the AAO is affirmed. The petition is denied.