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U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 032 52001 Office: CALIFORNIA SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner: [redacted]
Beneficiary

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a company that engages in flight training in a variety of aircraft, from primary aircraft through high performance and jet aircraft. In order to employ the beneficiary as an instructional coordinator, the petitioner 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 evidence of record did not establish that the beneficiary is qualified to perform the duties of a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). While explicitly acknowledging that the beneficiary holds the equivalent of a baccalaureate in aviation, the director determined that the position required a master's degree in that discipline.

On appeal, counsel submits a brief and documentary exhibits to demonstrate that the director erred in finding that a baccalaureate in aviation is not a sufficient qualifying credential. The AAO has determined that the director was correct in his decision to deny the petition, but that he erred in the basis of his decision.

Counsel correctly asserts that the evidence of record established that a baccalaureate degree in aviation is sufficient to qualify a beneficiary for the proffered position. However, contrary to the director's determination, the evidence of record does not establish that the beneficiary holds the equivalent of a U.S. baccalaureate degree in aviation. Therefore, the director's decision will be withdrawn and the matter remanded for entry of a new decision after the petitioner's has been afforded the opportunity to respond on the issue of the lack of evidence to establish that the beneficiary is qualified to serve in the specialty occupation in accordance with the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

The AAO based this decision on review of the entire record in this proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief, together with its attached exhibits.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

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.

There is no evidence relevant to section *1* above. Section *2* is not a factor, because it requires a determination by a reputable foreign-degree evaluating service.

Section *3* is not an issue in this proceeding, either. The copy of the beneficiary's license as a flight instructor on single engine planes establishes that there is no impediment to his instructing on single engine aircraft. However, as flight instruction is presented as a relatively small aspect of the proffered position, the license alone does not establish that the beneficiary is qualified for the position. Therefore, to qualify the beneficiary, the evidence must demonstrate that he meets the criterion at section *4*.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) shall be 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.

Only sections *1* and *5* need be addressed. There is no evidence of record regarding the other sections.

The director erred in accepting Professor Rouvensville's letter as a section *1* evaluation. The AAO discounted this evidence for the reasons discussed below.

Citizenship and Immigration Services (CIS) will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience, training, or academic coursework unless that faculty member's authority to grant academic credit is endorsed in a letter from the provost or appropriate dean who would be clearly authorized to speak for the university on this particular matter. The letter of endorsement submitted by Professor Esser, the Associate Department Chair at Embry-Riddle Aeronautical University's Aeronautical Science Department, does not meet this criterion. It is not evident that Embry-Ridell Aeronautical University has authorized this professor to speak on its behalf on Professor Rouvensville's academic powers.

Furthermore, while Professor Esser's letter indicates that Professor Rouvensville has been designated to evaluate academic courses and work experience and to recommend the grant or denial of college credits in aviation, aviation science, and related areas, the letter does not state that the university has endowed Professor Rouvensville with the authority to grant such credit.

Also, Professor Rouvensville's letter provided an insufficient factual basis for its determination that the beneficiary's eleven years of work experience "reflect the time equivalent of not less than three years of bachelor's level training in aviation." First, the professor does not specify the documentation upon which he relied for his evaluation. Based upon the similarity in wording between the beneficiary's resume and the professor's section on the beneficiary's experience, it appears that the determination may have been based on generalized information that conveyed little detail about the eleven years at issue. The lack of information about the professor's documentary basis also raises the issue of how well the information upon which the professor relied was corroborated by independent sources. Next, the professor does not explain how he computed years "of bachelor's training in aviation" from work which, according to his evaluation, included duties in account management and diplomatic relations (1994-1995); advice and consultation to the Chief of Defense of the Czech Republic, media relations, diplomatic interpreter work, command and control structures, strategy, policy, and acquisitions (1995-1998); and NATO staff officer work and program manager work on "high-level military-political exercises" (1998-2001). The relationship which such experience bears to an aviation degree is not evident.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Next, the record as presently constituted does not provide an evidentiary basis for a favorable determination in accordance with the criteria at section *5* of 8 C.F.R. § 214.2(h)(4)(iii)(D).

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 occupation[1];

(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.

There are no letters from former supervisors that are so detailed and comprehensive about the beneficiary's work experience as to clearly demonstrate the extent to which that experience (1) included "the theoretical and practical application" of specialized aviation knowledge required by the proffered position, and (2) "was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation."

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*)(*i*) to (*v*).

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of the beneficiary's qualifications to serve in the instructor coordinator's position, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's December 23, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.

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[1] *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).