

The Seattle Times

April 14, 2012

Russian engineers, once turned back, now flowing to Boeing again

When 18 Russian engineers headed for Boeing were denied entry at Sea-Tac Airport last fall, the company became part of a growing controversy over using B-1 visas to bring in foreign workers for months-long visits.

By [Dominic Gates](#)

After flying more than 13 hours from Moscow, 18 Russian engineers arrived at Seattle-Tacoma International Airport on Oct. 14 for two-to-three-month stints at Boeing.

Some in the group, all contractors at Boeing's engineering design center in Moscow, had done up to seven similar tours in the previous four years. They carried letters of invitation from Boeing and short-term B-1 business-visitor visas.

Customs and Border Protection (CBP) agents, however, concluded the engineers were concealing what they'd really be doing at Boeing — day-to-day engineering work rather than training or networking.

As one engineer acknowledged to them, the invitation letter claiming he was here for on-the-job training "was the truth but not the whole truth."

CPB officers ruled the engineers needed work visas, not B-1 visas. They detained all 18 at the airport until they could be put on the next available flight back to Moscow.

The incident embarrassed Boeing, which immediately suspended such visits. And it was a momentary triumph for the white-collar union at Boeing, the Society of Engineering Employees in Aerospace (SPEEA).

SPEEA has long been unhappy about the Moscow center, where some 1,500 mostly contract employees have designed many pieces of Boeing airplanes, including on the 787 Dreamliner, for pay that's approximately one-third to one-fifth of U.S. rates.

The union is especially rankled by the large batches of temporary Russian engineers it says Boeing has cycled through its Puget Sound-area offices in recent years, typically around 200 at any given time, each staying two to three months.

Nationally, there's growing controversy over such routine use of B-1 visas to bring in workers for months-long visits during which they perform tasks similar to their American counterparts.

U.S. Sen. Charles Grassley, R-Iowa, has complained that employers "are taking advantage of the system and importing foreign workers to the detriment of Americans."

Yet within weeks of the airport incident, it was back to business as usual.

In December, Boeing quietly resumed visits by Russian contract engineers, without further friction at Sea-Tac Airport and with the apparent blessing of the federal agencies that police immigration.

New insights

Much about the Sea-Tac incident — and current government policy about such visits — remains murky. But heavily redacted documents released by the CBP under a Freedom of Information Act request by The Seattle Times show the visiting engineers were questioned individually about exactly what they would be doing at Boeing.

While B-1 visa visitors are allowed to engage in training and liaison activities, they aren't allowed to work directly for a U.S. company.

The engineers were all contract employees of Russian firms NIK and Progesstech who worked at Boeing's Moscow center. At first, they told the CBP officer they were here for "on-the-job training" and to network with American colleagues at Boeing.

Yet several described their intended activity as "hands-on" engineering work and said they expected to put in 40-hour weeks at Boeing's Everett offices.

One engineer initially "kept reiterating that he would not do any hands-on work at the (Everett) plant," but later, under oath, conceded that he would.

When pressed, several admitted to being "coached by high-level Russian NIK employees" on what to tell border officials

A female design engineer said NIK had told her "she would perform the same work in the United States as she did in Russia," but "admitted that she was instructed by her company not to state that she would be working in the United States."

Another engineer, asked by the CBP agent why Boeing was inviting in foreign engineers, ventured his opinion that "it made much more sense to hire the Russian engineers for two months, than hiring U.S. engineers and having to lay them off afterwards," adding "that it was cheaper to hire Russian engineers than American."

During the airport interviews, CBP officer John Hullett called SPEEA headquarters for clarification as to what the Russian engineers typically did in Everett.

SPEEA's director of strategic development, Rich Plunkett, who has for years complained both to Boeing and the State Department about the influx of temporary Russian engineers, told Hullett they do the same work as their American colleagues in adjacent cubicles.

In a later interview, Plunkett said that while Boeing may depict what the Russians are doing as "training," his union's members consider it "our work."

The documents don't explain why the officer called SPEEA. "(Hullett) told me he couldn't get a straight answer out of Boeing," Plunkett said.

Boeing won't discuss the Sea-Tac incident in much detail. Spokesman Marc Birtel said the company lifted the travel restriction after discussions with the CBP in Seattle and a review of its internal processes for issuing visa invitations.

He insisted it is "essential" that Russian personnel "travel regularly to the United States for activities related to the engineering work packages that the Boeing Design Center performs in Moscow."

Terry Preshaw, an immigration lawyer with offices in Everett and Vancouver, B.C., who has represented foreign firms sending engineers to the U.S. — though not any Russians and not to Boeing — offered the corporate perspective.

"I personally don't see this as a situation where these foreign engineers are scabs taking away jobs from Americans. That's not what's happening here," she said.

Given the fact that Boeing had outsourced work overseas, Preshaw said, "it ought to be a good idea to have some engineers from the foreign company hop on a plane, sit down with Boeing's engineers, gather the data, learn what they need to learn, and then go back and do the job they've contracted to do with Boeing."

National controversy

In bringing in the engineers, Boeing took advantage of a State Department policy that business visitors can under certain circumstances be issued B-1 visas rather than H-1B nonimmigrant work visas.

It's a crucial difference. H-1B visas, restricted to 85,000 annually, are harder to get, cost more and take longer to process.

If the Russians had come in under H-1B visas, Boeing would have had to pay them prevailing wages, they'd be represented by SPEEA and they would pay U.S. taxes. Coming in as contractors with B-1 visas, and not directly paid by Boeing, those conditions don't apply.

The so-called "B-1 in lieu of H1-B" policy is intended to allow foreign companies to send employees on short business visits, including training or consulting with American counterparts at a U.S. affiliate.

But according to Washington, D.C., immigration lawyer Jan Pederson, the line between "work" and "on-the-job training" is unclear.

"We lawyers often have trouble telling clients where the line is," said Pederson. "It's a big gray area."

A lawsuit filed last year in Alabama by a former employee of India software-outsourcing firm Infosys accuses that company of using the policy as a routine way to get around the H-1B restrictions.

Infosys denies wrongdoing, but the case sparked a campaign against abuse of the B-1 visa system, led by Grassley.

"It appears that companies are using the policy as a creative way to get around the rigorous conditions that go along with employing an H-1B visa holder," Grassley said.

No fault found

A federal Immigration and Customs Enforcement (ICE) investigation into the Sea-Tac incident found no fault with either the passport-control officials or Boeing.

Adam Anderson, the ICE special agent who conducted the investigation, said in an interview that based on what the CPB agents were told, "the visas were improper at the time" and so "the turn-backs, by the sheer face value of them, were appropriate."

He characterized the airport confrontation as "a communications error between what CBP's officers were hearing and what the Russian workers were saying," largely due to "cultural differences."

On the other hand, Anderson said the ICE investigation also exonerated the company, finding "Boeing did nothing wrong."

But Anderson added that he did not look into whether either the contracting companies in Moscow, or anyone at Boeing Russia, did anything wrong in preparing or sending the 18 engineers.

"I don't investigate Boeing Russia," he said.

The broader question is whether the "B-1 in lieu of H-1B" visa policy should continue to be available to Boeing and other companies.

A year ago, Grassley complained to both the State Department and the Department of Homeland Security (DHS) that the policy provides "legal ways companies can use the B-1 visa program to defy the intent of Congress."

In May, the State Department told Grassley it is "in the process of discussing with DHS removing or substantially modifying the B-1 in lieu of H guidelines."

Meanwhile, the policy remains. CBP spokesman Mike Milne said the agency hasn't changed border-control procedures since the October incident, and neither he nor Boeing would comment on their discussions to resolve the matter.

Yet the outcome is that Russian engineers are again flowing unimpeded through Sea-Tac to work — or not to work — in Everett.

Data that SPEEA gets from Boeing show about 250 Russian contract engineers have entered the country at Boeing's invitation since the October incident.

But at least for now, the number here is smaller than it had been. According to SPEEA's data, the Russian contractor contingent in Everett in mid-March numbered 75 engineers, down from 190 in September.

Dominic Gates: 206-464-2963 or dgates@seattletimes.com