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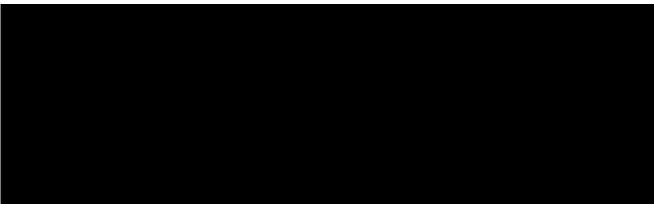
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FILE: EAC 03 241 56122 Office: VERMONT SERVICE CENTER Date: OCT 31 2005

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, Director
Administrative Appeals Office

DISCUSSION: The director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner specializes in the management of returned merchandise and seeks to extend the employment of the beneficiary as an electrical engineer. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An 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:

- (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 (5th 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 states that it is seeking the beneficiary's services as an electrical engineer. Evidence of the beneficiary's duties includes: the Form I-129 and the August 13, 2003 letter from the petitioner; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail troubleshooting and servicing professional digital and analog medical equipment, security equipment, and audio and video equipment (60% of time); evaluating operational systems and recommending design modifications to eliminate causes of malfunctions or changes in system requirements (20% of time); using computer assisted engineering and designing software and equipment to perform engineering tasks (10% of time); and researching and testing electronic components, products and systems for digital and analog electronics equipment; designing electronic circuits, components and integrated systems (5% of time). In the initial petition, the petitioner indicated that the position requires a master's degree in electronic engineering.

The director requested the petitioner to submit a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities. The director requested the identification of which specific tasks require the expertise of someone who holds a baccalaureate degree and how the beneficiary's education relates to the position itself. The director requested information about other individuals in the petitioner's establishment who are currently employed in the position and how many individuals have obtained a bachelor's degree and documentary evidence to support the petitioner's claim. The director noted that she was unable to determine the type of business the petitioner operates and requested additional information such as a brochure describing its business, income tax returns or Form 941 quarterly tax returns.

In response the petitioner provide a more detailed job description and indicated that the position requires a bachelor's degree or equivalent in electronics engineering. The petitioner submitted internet job postings from various companies for engineer positions. The petitioner provided a brochure which explained that it operates a merchandise return program for modification, repair, or refurbishment of equipment and appliances. The petitioner indicated that it worked with products such as broadcast editing systems, and small appliances and that medical and optical products are a specialty. The petitioner indicated on the Form I-129 that it was established in 1990, had 32 employees and had a gross annual income of \$1.8 million. The petitioner submitted its tax return which indicated gross sales of \$2 million with salaries or wages in the

amount of \$38,720 and compensation of officers in the amount of \$111,000. The petitioner indicated that the proffered position was a full-time position for an electronics engineer at \$20,800 per year.

The director determined that the proffered position was not a specialty occupation. The director found that the record did not establish that the preponderance of the proposed duties are so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific field of study. The director found that the beneficiary would spend the majority of his time servicing and troubleshooting which are the duties of a technician. The director noted that technicians do not normally require a baccalaureate degree in a specific field of study.

In his denial, the director reviewed the record and noted that although the petitioner has been in business since 1990, it has not established that it has a history of employing individuals with a baccalaureate degree in a specific field of study for the proposed position. The director noted that the record includes an acknowledgement that the beneficiary is the only individual employed with the stated position duties. The director found that the submitted internet job postings do not relate to organizations within the same industry. The director concluded that the record does not establish that the job offered qualifies as a specialty occupation as defined above.

On appeal, the petitioner contends that the job title is electronics engineer and refers to an SVP rating of 8 in support of its contentions. The petitioner restates the job duties of the proffered position and submits a letter from a supervisor with Panasonic Service Support Company. The author of the letter opines that the beneficiary has expertise in handling its products.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. The petitioner refers to an SVP rating found in the Department of Labor's *Dictionary of Occupational Titles* (*DOT*). The petitioner asserts that the *DOT* shows that a bachelor's degree would be required for the proffered position. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network* (*O*Net*). Both the *DOT* and *O*Net* provide 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. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific SVP rating in the *DOT*.

Based on the record of proceeding, the AAO has determined that the proffered position is not an electronics engineer. The *Handbook* indicates that electrical and electronic engineers design, develop, test, and supervise the manufacture of electrical and electronics equipment rather than troubleshoot and service equipment as indicated by the duties described by the petitioner. The AAO finds that the proffered position is most similar to that of an electrical and electronics repairer in the *Handbook*. The *Handbook* describes electrical and electronic repairers in the following way:

Businesses and other organizations depend on complex electronic equipment for a variety of functions. These complex pieces of electronic equipment are installed, maintained, and

repaired by electrical and electronics installers and repairers. Electrical equipment and electronic equipment are two distinct types of industrial equipment, although much equipment contains both electrical and electronic components. In general, electrical portions provide the power for the equipment, while electronic components control the device, although many types of equipment still are controlled with electrical devices. . . . Automated electronic control systems are increasing in complexity, making diagnosis more challenging. Repairers use software programs and testing equipment to diagnose malfunctions. Among their diagnostic tools are multimeters, which measure voltage, current, and resistance; and advanced multimeters, which measure capacitance, inductance, and current gain of transistors. . . . Electrical and electronics installers often fit older manufacturing equipment with new automated control devices. Older manufacturing machines are frequently in good working order, but are limited by inefficient control systems for which replacement parts are no longer available.

These duties are similar to the proffered position's duties of: troubleshooting and servicing professional digital and analog medical equipment, security equipment, and audio and video equipment; and using computer assisted engineering and design software and equipment to perform engineering tasks.

With respect to the educational qualifications of electrical and electronics installers and repairers, the *Handbook* states:

Knowledge of electrical equipment and electronics is necessary for employment. Many applicants gain this knowledge through programs lasting 1 to 2 years at vocational schools or community colleges, although some less skilled repairers may have only a high school diploma. Experienced repairers with advanced training may become specialists or troubleshooters who help other repairers diagnose difficult problems.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the electrical engineer position.

The petitioner submitted insufficient evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. As noted by the director, the submitted internet job postings do not relate to organizations within the same industry. For example, one posting was for an electronics engineer with B/E Aerospace, and a second posting was for an electronics/machine control engineer with SSG Precision Optronics working in the optics manufacturing business. Consequently, the postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

Again, the evidentiary record depicts the duties of the proffered position as those of electrical and electronics installers and repairers, occupations that do not require a degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually

associated with the attainment of a baccalaureate or higher degree. The duties parallel those in the *Handbook* for electrical and electronics installers and repairers. The petitioner has not established that the duties are more specialized and complex than what is normally encountered in the field. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner therefore fails to establish the fourth criterion.

The AAO notes CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve 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). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Therefore, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.