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U.S. Citizenship
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Services

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FILE: SRC 04 031 52604 Office: TEXAS SERVICE CENTER Date: **JUN 12 2006**

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 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 a wireless technology services firm that seeks to hire the beneficiary as an electronics technician. 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 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 response to the director's request; (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.

The director denied the petition on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the proposed position in fact qualifies for classification as a specialty occupation.

The issue on appeal is whether the petitioner's proposed position qualifies for classification as a specialty occupation. 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 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.

In its October 8, 2003 letter of support, the petitioner stated that the duties of the proposed position would consist of analyzing, installing, testing, and resolving problems for cellular systems; providing technical support for customers and field personnel; gathering and recording information for the resolution of system software and hardware problems; and monitoring customer systems for quality performance and customer satisfaction.

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 *Handbook* provides the following information regarding the duties of engineering technicians:

Engineering technicians use the principles and theories of science, engineering, and mathematics to solve technical problems in research and development, manufacturing, sales, construction, inspection, and maintenance. Their work is more limited in scope and application-oriented than that of scientists and engineers. Many engineering technicians assist engineers and scientists, especially in research and development. Others work in quality control, inspecting products and processes, conducting tests, or collecting data. In manufacturing, they may assist in product design, development, or production. Although many workers who repair or maintain various types of electrical, electronic, or mechanical equipment are called technicians, these workers are covered in the *Handbook* section on installation, maintenance, and repair occupations.

The *Handbook* notes that “most engineering technicians specialize in certain areas, learning skills and working in the same disciplines as engineers. Occupational titles, therefore, tend to reflect those of engineers.” In its discussion of the duties of electrical and electronics engineering technicians, the *Handbook* states the following:

Electrical and electronics engineering technicians help design, develop, test, and manufacture electrical and electronic equipment such as communication equipment. . . . They may work in product evaluation and testing, using measuring and diagnostic devices to adjust, test, and repair equipment. . . .

The duties of the proposed position are similar to those of electrical and electronics engineering technicians, as those positions are discussed in the *Handbook*.

The AAO next turns to the *Handbook's* discussion of the minimum entry qualifications required for electrical and electronics engineering technicians:

Although it may be possible to qualify for certain engineering technician jobs without formal training, most employers prefer to hire someone with at least a 2-year associate degree in engineering technology. Training is available at technical institutes, community colleges, extension divisions of colleges and universities, and public and private vocational-technical schools, and in the Armed Forces. Persons with college courses in science, engineering, and mathematics may qualify for some positions but may need additional specialized training and experience. Although employers usually do not require engineering technicians to be certified, such certification may provide jobseekers a competitive advantage.

Prospective engineering technicians should take as many high school science and math courses as possible to prepare for postsecondary programs in engineering technology. Most 2-year associate degree programs accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET) require, at a minimum, college algebra and trigonometry, and one or two basic science courses. Depending on the specialty, more math or science may be required.

Thus, an electrical and electronics engineering technician is not required to have a baccalaureate degree or its equivalent in order to enter the field.

Accordingly, the proposed position does not qualify as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

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.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for additional evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, the petitioner must establish that its degree requirement exists in parallel positions among organizations similar to the petitioner.

There is no evidence in the record to establish that any of the job postings are from companies similar in size and scope of operations to the petitioner, a wireless technology services firm with 70 employees. Cingular Wireless, Ericsson, and Nokia are industry leaders in the field of telecommunications and operate on a much larger scale than the petitioner. No information was submitted regarding Amirit Technologies, Inc. While iTel Consulting and Last Mile Connections do appear to be in the same business as the petitioner, no evidence has been submitted to indicate whether they are similar to the petitioner in scope and scale of operations.

Nor do these positions appear to be "similar" to the proposed position, an electronics technician, as these postings, save the one at Last Mile Connections, involve engineering positions.

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 second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the proposed position is analogous to those of electrical and electronics engineering technicians, which do not require a degree.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

Counsel has submitted several copies of several engineering diplomas, and asserts that the petitioner normally requires individuals holding the position offered to the beneficiary to possess a degree. In her denial, the director noted that "no information was submitted to demonstrate that these persons hold positions similar to the beneficiary's." Counsel does not address this concern on appeal, nor does he offer any evidence to overcome it. Nor has counsel submitted any evidence to demonstrate that any of these individuals work, or ever have worked, for the petitioner.

Nor does the fact that Ericsson and Nokia require the petitioner's engineers to possess bachelor's degrees establish the proposed position as a specialty occupation under this criterion, as it is not an engineering position.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree for electrical and electronics engineering technician positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than those of the aforementioned positions. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO notes that counsel offered no evidence on appeal to overcome the decision of the director that was not already contained in the record. In fact, a close inspection of counsel's January 13, 2005 appellate brief reveals that, other than dates and references to the director's denial, it is nearly identical to his July 13, 2004 response to the director's request for evidence.

Finally, the AAO notes that this petition is an application for an extension of previously granted status. However, 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 petition was similar to the position proposed here 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 substantially similar to the evidence

contained in this record of proceeding, however, that approval would have been material and gross error on the part of the director. 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Thus, for the reasons related in the preceding discussion, the petitioner has failed to establish that the proposed position qualifies for classification as 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.