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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: SRC 04 212 54122 Office: TEXAS SERVICE CENTER Date: MAY 25 2006

IN RE: Petitioner: [redacted]
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:

[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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Texas 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 operates an aircraft maintenance service. In order to continue to employ the beneficiary as an aircraft maintenance technician, the petitioner seeks to continue the beneficiary's H-1B classification and extend his stay 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 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 statement and additional documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's 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 aircraft maintenance technician and mechanic. Evidence of the beneficiary's duties includes: the Form I-129; a letter of support from the petitioner; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail performing all phases of aircraft maintenance and repairs consisting of major inspections, overhauls, and repairs of aircraft parts and components, including engines.

The petitioner stated that the minimum preparation for entry into this position is six years in the form of a four-year college course of studying aviation technology with two additional years of experience or equivalent.

The director found that the information submitted does not adequately establish that a baccalaureate of higher degree or its equivalent is normally the minimum requirement for entry as an aircraft maintenance technician. The director also determined that the petitioner has not established that a bachelor's degree is common to the industry in parallel positions among similar organizations or, in the alternative, that the employer showed that its particular position is so complex or unique that it can be performed only by an individual with a degree. The director referred to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as indicating that most aircraft maintenance technicians become mechanics through on-the-job training and trade schools. The director found that the evidence of record does not establish that the job offered qualifies as a "specialty occupation."

On appeal, counsel contends that the director erred in fact and in law by failing to explain why she was not following CIS' previous grant of H-1B status to the petitioner. Counsel contends that the "H-1B status was granted because the petitioner obviously satisfied the previous [director] that the position is professional and that the [beneficiary] is a member of this profession through a combination of academic work and related work experience."

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition 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. 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).

On appeal, counsel asserts that the "substantial evidence" rule was violated by the service center adjudications officer because the officer injected his/her own subjective criteria rather than follow established legal standards set by regulations, administrative decision and federal judicial decisions. Counsel asserts that the internet job postings previously submitted were sufficient to show that the industry is currently requiring a four-year college degree for entry into the occupation in questions.

Counsel asserts the position of aircraft maintenance technician has changed from non-professional to professional and relies on the Department of Labor's *Occupational Information Network* (*O*Net)*. Counsel contends that the *O*Net* has replaced the DOL's *Dictionary of Occupation Titles* (*DOT*) and the DOL' s *Occupational Outlook Handbook* (*Handbook*). Counsel refers to the *O*Net* databases as indicating, for aviation mechanics, most jobs are requiring a college degree. Counsel asserts that the director fixed the denial around outdated information in the *Handbook*.

While counsel is correct in noting that the *O*Net* system supercedes the *DOT*, counsel is incorrect in stating that the *O*Net* has replaced the *Handbook* as a primary reference material. The *O*Net* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*Net* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. This resource does not describe the amount of training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on *DOT* or *O*Net* information. The AAO routinely consults the *Handbook* for its information about the duties and educational

requirements of particular occupations. The *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 an occupation. Contrary to counsel's assertion of its being out-of-date, the *Handbook* is revised every two years and in this decision the AAO refers to the current 2006-2007 edition of the *Handbook*, which is accessible on the Internet at www.stats.bls.gov/oco.

A thorough review of the *Handbook* discloses that the duties of the proffered position most closely resemble the duties of an aircraft and avionics equipment mechanic and service technician as defined in the *Handbook*, an occupation which does not normally require a baccalaureate level of study. The *Handbook*'s description of training, other qualifications and advancement for aircraft and avionics equipment mechanics and service technicians indicates:

> Most mechanics who work on civilian aircraft are certified by the FAA as an "airframe mechanic" or a "powerplant mechanic." Mechanics who also have an inspector's authorization can certify work completed by other mechanics and perform required inspections. Uncertified mechanics are supervised by those with certificates.
>
> The FAA requires at least 18 months of work experience for an airframe or powerplant certificate. For a combined A&P certificate, at least 30 months of experience working with both engines and airframes is required. Completion of a program at an FAA-certified mechanic school can substitute for the work experience requirement. Applicants for all certificates also must pass written and oral tests and demonstrate that they can do the work authorized by the certificate. To obtain an inspector's authorization, a mechanic must have held an A&P certificate for at least 3 years, with 24 months of hands on experience. Most airlines require that mechanics have a high school diploma and an A&P certificate.

As stated above, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not a normal educational requirement for the occupation of aircraft and avionics equipment mechanics and service technician. In support of its assertion that a baccalaureate or higher degree is a requirement for entry in the field, the petitioner submitted an e-mail from a [redacted] to [redacted] which indicated that "the industry is starting to require more in the line of having a degree." The petitioner explained that [redacted] is the director of the Southwest region for the Professional Aviation Maintenance Association (PAMA). This e-mail does not claim that a baccalaureate degree in a specific specialty is an educational requirement for entry into the occupation of aircraft and avionics equipment mechanic and service technician and it is insufficient to overcome the information found in the *Handbook*.

The petitioner has not provided sufficient evidence to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Counsel refers to the job postings that were submitted in response to the director's request for evidence. In her decision, the director found that the "job postings do not provide any evidence as to the size and scope of the company, and do not all appear to be in the same area." Additionally, the director noted that many of the job postings stated a requirement for a bachelor's degree but that, "if you read further into the qualifications they state four years experience can be substituted for the educational requirements."

On appeal, counsel asserts that the director applies an incorrect standard and refers to the director's statement, noted above, that "not all appear to be in the same area." Counsel states that the director was referring to the same geographic area as the petitioner and thus the director applied an incorrect standard. Upon review, the AAO finds that director was referring to the requirements of the criterion such as area of industry or type of

organization and not a geographic area. As noted above, the criterion specifically states "a specific degree requirement is common to the industry in parallel positions among similar organizations."

To establish the first alternative prong of the second criterion, counsel relies on submitted internet job postings from a wide variety of companies or organizations which includes the U.S. Air Force Reserve, Butler Engineering, Daniel Systems, Essig Research Inc., Patrick Berendis & Associates, ADECCO Technical and Omega Resource Group.

This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. The job postings are not probative. One deficiency in the postings is that the companies are dissimilar to the petitioner or their nature is undisclosed. For example, Adecco Technical is a placement firm and does not specify the client; Daniel Systems, Inc. is a privately held company specializing in the delivery of proprietary computerized aviation maintenance planning technology, software and services; and the U.S. Air Force Reserve is part of the U.S. Military. As such, the petitioner has not demonstrated that the organizations in the internet job postings are similar in size and scope to the petitioner and thus, a similar organization. Further, the record does not contain evidence that establishes that the proffered position is a parallel position to those listed in the advertisements. For example, the position listed by Patrick Berends & Associates is for a mechanical systems hydraulic engineer (aerospace) and requires capabilities with aircraft hydraulic system architecture and the associated components; Daniel Systems Inc., indicated that the position openings were for a maintenance planning analyst, maintenance analyst and technical writer and indicated that qualifications required were a bachelor's degree related to aircraft technology and/or and airframe and a powerplant license. The position with Leach International is for a mechanical engineer and the duties include providing design support and mechanical problem-solving for the manufacture of electro-mechanical relays, electrical power distribution assemblies and electronic assembly packaging for aerospace applications. The nine U.S Air Force Reserve positions indicated that the requirements to be considered for an officer position included generally, an undergraduate degree, without indicating a degree in a specific specialty. Consequently, the postings fail to establish that a requirement of a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations. The petitioner asserted that it is an evolving industry and the reason is safety. The petitioner has provided no independent evidence to substantiate his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)).

Nor has the petitioner established that the particular position is so complex or unique that it can be performed only by an individual with a degree in order to satisfy the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The evidence of record fails to distinguish the proffered position as any more complex or unique than the usual range of aircraft and avionics equipment mechanics and service technician for which the *Handbook* indicates that a bachelor's or higher degree in a specific specialty is not a normal requirement.

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 petitioner stated that it employed eleven persons. It has not stated and documented that it normally requires a specialty degree for the position. Thus the evidence does not establish that the petitioner normally requires a degree.

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 in a specific specialty. 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 has not distinguished the duties of the proffered position from those normally required in the field. The duties parallel those in the *Handbook* for an aircraft mechanic and technician, an occupation that does not require a specific baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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.

Beyond the decision of the director, the petitioner has not shown that the beneficiary is qualified to perform the services of a specialty occupation in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(iii)(4)(C) and (D). The petitioner provided an education evaluation from a foreign education credentialing services indicating that the beneficiary has obtained the equivalent in level and purpose to an Associate of Applied Science in Aircraft Maintenance Technology. This does not establish the beneficiary's attainment of the equivalent of at least a bachelor's degree in a specific specialty as required by the beneficiary qualification regulations. On appeal, counsel asserts that the beneficiary is qualified to perform services in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), because the beneficiary's previous H-1B petition had been approved by the director. As noted above, each nonimmigrant petition is a separate proceeding with a separate record and approval of a petition does not preclude denial of its extension where, as here, the record does not establish that the proffered position is a specialty occupation. Here, the record is insufficient for the AAO to make the determination that the beneficiary is qualified to perform services in 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 sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.