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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 005 53349 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 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:

[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.

*Robert P. Wiemann*

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 appeal will be dismissed. The petition will be denied.

The petitioner is a telecommunications company that seeks to employ the beneficiary as a telecommunications consultant. 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 director denied the petition on the basis that the petitioner had not established that the proposed position qualifies as a specialty occupation. On appeal, counsel submits an appellate brief and additional evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (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 petitioner is seeking the beneficiary's services as a telecommunications consultant. Counsel's submission letter set forth the following description of the duties of the proposed position:

In this position he [the beneficiary] would be consulting with the firm's clients re [sic] the creation, installation, maintenance[,] and use of GSM (Global System for Mobile communications) cellular telephone networks, including [the] training [of] client personnel. His duties would include, 1) testing and evaluating the client's telecommunications systems, including analyzing their work load, traffic[,] and utilization trends; 2) interfacing with users, technical teams, and vendors for maximum guidance in determining the most appropriate type of hardware to install, including answering technical questions, providing pricing for products, and project plans; 3) lay out, test, troubleshoot, repair[,] and modify components and systems; and 4) educating client staff re [sic] rectification and equipment maintenance.<sup>1</sup>

In the RFE response, counsel broke down the percentage of time that the beneficiary will spend performing the proposed position's various tasks. Counsel stated that the beneficiary would spend 50% of his time performing the first set of duties, 10% of his time performing the second, 30% of his time performing the third, and 10% of his time performing the fourth.

The director denied the petition, stating "[u]pon review of the evidence submitted with the petition, it is concluded that the evidence fails to establish that the position meets any of the required criteria for classification as a specialty occupation."

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<sup>1</sup> The AAO notes that GSM is a cellular communications system. Although it was initially developed to create a common European mobile telephone standard, GSM has rapidly achieved worldwide acceptance, and is today the most commonly used cellular network platform outside the United States. In the United States, GSM is one of two primary cellular telephone network platforms; CDMA (Code Division Multiple Access) is the other.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation. Counsel asserts that “[t]his denial is based upon a clearly mistaken classification of the occupation in which the job offered belongs.” Counsel contends that the “creation, maintenance[,] and installation of GSM cellular telephone networks requires extensive knowledge of telecommunications technology, electronics, electrical engineering, physics, global telecommunications infrastructure, digital cellular terminology, cellular system hardware and software, and radio technology.”

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation 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.

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.

In determining whether a position qualifies as a specialty occupation, Citizenship and Immigration Services (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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

Counsel contends that the duties of the proposed position are similar to those of electrical and electronics engineers, as discussed in the *Handbook*:

From the global positioning system that can continuously provide the location of a vehicle to giant electric power generators, electrical and electronics engineers are responsible for a wide range of technologies. Electrical and electronics engineers design, develop, test, and supervise the manufacture of electrical and electronic equipment. Some

of this equipment includes broadcast and communications systems; electric motors, machinery controls, lighting, and wiring in buildings, automobiles, aircraft, and radar and navigation systems; and power generating, controlling, and transmission devices used by electric utilities . . .

Electrical and electronics engineers specialize in different areas such as power generation, transmission, and distribution; communications; and electrical equipment manufacturing, or a specialty within one of these areas—industrial robot control systems or aviation electronics, for example. Electrical and electronics engineers design new products, write performance requirements, and develop maintenance schedules. They also test equipment, solve operating problems, and estimate the time and cost of engineering projects.

The record in this case does not support the assertion that the duties of the proposed position require a baccalaureate degree or its equivalent. While the proposed position may include some duties that involve engineering functions, the AAO is not persuaded that they are at a level of specialization or complexity that they require the theoretical and practical application of a body of highly specialized knowledge and a baccalaureate degree or its equivalent. The proposed position lacks crucial characteristics of an electrical and electronics engineering position, as described in the *Handbook*. For example, the beneficiary will not “design, develop, test, and supervise the manufacture” of new products. Nor will he “design new products.” Such functions are not reflected in the petitioner’s description of the proposed position’s duties. While he may “test equipment,” such testing would not fall within the context of electrical and electronic engineers as contemplated by the *Handbook*. The scope of the proposed position lacks both the breadth and the depth of an electrical and electronics engineering position.

The director found the duties of the proposed position similar to those of radio and telecommunications equipment installers. The *Handbook* splits its discussion of radio and telecommunications equipment installers into four fields – (1) central office installers; (2) PBX installers and repairers;<sup>2</sup> (3) station installers and repairers, telephone; and (4) radio mechanics. The proposed position is clearly analogous to neither PBX installers and repairers nor radio mechanics.

The *Handbook* provides the following information regarding the duties of central office installers and repairers:

*Central office installers* set up switches, cables, and other equipment in central offices. These locations are the hubs of a telecommunications network—they contain the switches and routers that direct packets of information to their destinations. Although most telephone lines connecting houses to central offices and switching stations are still copper, the lines connecting these central hubs are fiber optic. Fiber optic lines have led to a revolution in switching equipment. The greatly increased transmission capacity of each line has allowed a few fiber optic lines to replace many copper lines. Packet switching equipment is evolving rapidly, ever increasing the amount of information that a single fiber optic line can carry. These switches and routers have the ability to transmit, process, amplify, and direct a massive amount of information. Installing and maintaining this equipment requires a high level of technical knowledge.

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<sup>2</sup> PBX (private branch exchange) installers install PBX switchboards, which relay incoming, outgoing, and interoffice telephone calls. PBX switchboards do not utilize cellular technology.

When problems with telecommunications equipment arise, telecommunications equipment repairers diagnose the source of the problem by testing each of the different parts of the equipment, which requires an understanding of how the software and hardware interact. Repairers often use spectrum and/or network analyzers to locate the problem. A network analyzer sends a signal through the equipment to detect any distortion in the signal. The nature of the signal distortion often directs the repairer to the source of the problem. To fix the equipment, repairers may use small handtools, including pliers and screwdrivers, to remove and replace defective components such as circuit boards or wiring. Newer equipment is easier to repair because whole boards and parts are designed to be quickly removed and replaced. Repairers also may install updated software or programs that maintain existing software.

The *Handbook* provides the following information regarding the duties of station installers and repairers, telephone:

*Station installers and repairers, telephone*—commonly known as *telephone installers and repairers* or *telecommunications service technicians*—install and repair telephone wiring and equipment on customers' premises. They install telephone or digital subscriber line (DSL) service by connecting customers' telephone wires to outside service lines. These lines run on telephone poles or in underground conduits. The installer may climb poles or ladders to make the connections. Once the connection is made, the line is tested. When a maintenance problem occurs, repairers test the customers' lines to determine if the problem is located in the customers' premises or in the outside service lines. When onsite procedures fail to resolve installation or maintenance problems, repairers may request support from their technical service center. Line installers and repairers, covered elsewhere in the *Handbook*, install the wires and cables that connect customers with central offices.

While these duties may not be completely analogous to those of the proposed position, the duties of the beneficiary are closer to those of a radio and telecommunications equipment installers than they are to an engineer. However, in order to find a closer match, the AAO turns to the *Handbook's* discussion of engineering technicians. 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 more practically 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 to design, develop, test, and manufacture electrical and electronic equipment such as communication equipment, radar, industrial and medical measuring or control devices, navigational equipment, and computers. They may work in product evaluation and testing, using measuring and diagnostic devices to adjust, test, and repair equipment. (Workers whose jobs are limited to repairing electrical and electronic equipment, who often are referred to as electronics technicians, are included with electrical and electronics installers and repairers elsewhere in the *Handbook*.)

Electrical and electronic engineering technology also is applied to a wide variety of systems such as communication and process controls. *Electromechanical engineering technicians* combine fundamental principles of mechanical engineering technology with knowledge of electrical and electronic circuits to design, develop, test, and manufacture electrical and computer-controlled mechanical systems.

The duties of the proposed position as set forth in the petitions are far more closely aligned to those of electrical and electronics engineering technicians than to those of electrical and electronics engineers. In fact, the proposed position is best described as a “hybrid” position, combining the duties of both a radio and telecommunications equipment installer and repairer and an engineering technician.

A review of the record supports such a conclusion. For example, the purchase order from Nokia indicates that the beneficiary would spend 100% of his time “troubleshooting.” The purchase order from Vanderwal Construction indicated that the beneficiary would perform such tasks as installing an antenna sharing kit and installing bias tees. Such tasks are not synonymous with those of electrical and electronics engineers but rather those of radio and telecommunications equipment installers and electrical and electronics engineering technicians.

Moreover, the *Handbook* reports the following information in its discussion of radio and telecommunications equipment installers: “Experienced repairers with advanced training may become specialists or troubleshooters who help other repairers diagnose difficult problems, or may work with engineers in designing equipment and developing maintenance procedures.” The record reflects that the beneficiary will be performing such tasks.

The AAO next turns to the *Handbook*'s discussion of the minimum entry qualifications required for radio and telecommunications equipment installers and repairers:

Most employers seek applicants with postsecondary training in electronics and a familiarity with computers. Training sources include 2- and 4-year college programs in electronics or communications, trade schools, and equipment and software manufacturers. Military experience with communications equipment is valued by many employers. Many equipment repairers begin working in telecommunications companies as line-installers or telephone installers, before moving up to the job of central office installer and other more complex work.

Thus, a radio and telecommunications equipment installer is not required to possess a baccalaureate degree or its equivalent for entry into the field. While most employers do require training, such training may consist of two- and four-year college programs, trade school coursework, or training from equipment and software manufacturers. This is not synonymous with the regulatory requirement that a baccalaureate degree be “normally required” for entry.

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.

As this is a “hybrid” position, merging the *Handbook's* description of two positions, and neither position requires a baccalaureate degree or its equivalent, the proposed position does not require a degree, either.

The AAO accords no weight to the information counsel submits from the *Dictionary of Occupational Titles (DOT)*, as 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. It provides an assessment (the S.V.P. rating) that is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.<sup>3</sup> For the same reason, the information counsel submits from the *Standard Occupational Classification System* is accorded no weight.

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<sup>3</sup> In a similar vein, the AAO will accord no weight to the information counsel submits from the Economic Research Institute's “eDOT,” as that information is based largely on the *DOT*.

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. No evidence has been submitted to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. 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. The nature of the duties of the proposed position as set forth in the petition does not support such a finding.

Therefore, the petitioner cannot establish the proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. However, in this case the proposed position is newly created and the petitioner has no hiring history for it. Accordingly, the proposed position does not qualify as a specialty occupation under this criterion.

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 AAO is not persuaded by the evidence of record, that the duties of the position exceed the occupational scope of an experienced electrical and electronics engineering technician or radio and telecommunications equipment installer, positions which do not require specialized knowledge at a baccalaureate level. Thus, the position does not qualify as a specialty occupation under the fourth criterion.

Counsel submits a copy of a term paper regarding GSM, written by a graduate student at the University of Waterloo, in Canada, and contends that this term paper proves the proposed position qualifies as a specialty occupation. The AAO rejects counsel's contention. While this paper explains the mechanics of the GSM network platform in detail, it does not discuss how the beneficiary would utilize any of the information discussed therein. As such, this term paper does not meet the petitioner's burden.

Counsel also contends that the petition should be approved because CIS previously approved an H-1B visa petition for the beneficiary. However, each nonimmigrant proceeding 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 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). Moreover, the AAO is never bound by a decision of a service center or district director. *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).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). 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.