U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF VTS-A-A-, INC.

DATE: OCT. 14, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a commercial aircraft maintenance, modification and engineering business, seeks to employ the Beneficiary as an aircraft technologies engineer and to classify him as a nonimmigrant worker in a specialty occupation. *See* Immigration and Nationality Act (the Act) § 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, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director reviewed the record of proceeding and determined that the Petitioner did not establish eligibility for the benefit sought. Specifically, the Director stated that the Petitioner had not established that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The Director denied the petition.

The record of proceeding contains: (1) the Petitioner's Form I-129 and supporting documentation; (2) the Director's request for evidence (RFE); (3) the Petitioner's response to the RFE; (4) the Director's decision; and (5) the Form I-290B, Notice of Appeal or Motion and supporting documentation. We reviewed the record in its entirety before issuing our decision.[1]

For the reasons that will be discussed below, we agree with the Director that the Petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

I. SPECIALTY OCCUPATION

The primary issue is whether the Petitioner has provided sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position.

[1] We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A. Legal Framework

For an H-1B petition to be granted, the Petitioner must provide sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the Petitioner must establish that the employment it is offering to the Beneficiary meets the applicable statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

> *Specialty occupation* means an occupation which [(1)] 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 [(2)] 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, a proposed 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;
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> *(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;
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> *(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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 387. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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 proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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.

B. Proffered Position

In the support letter, the Petitioner provided the Beneficiary's job duties in the proffered position.[2] In addition, the Petitioner stated "that a baccalaureate degree in an aviation or engineering field or its equivalent is normally the minimum requirement for employment as an aircraft technologies engineer."

On appeal, the Petitioner provides a revised job description for the proffered position, as follows:

> The ATE is responsible for providing aircraft-related engineering advice to commercial aircraft design, maintenance, modification, and reconfiguration projects that may be worth in excess of $100 million. The ATE provides technical leadership and direction to activities in the operation, maintenance, inspection, troubleshooting and repair of aircraft avionics systems, including auto pilot, communications, electrical, fire warning, instruments, navigation systems and related components, and hydraulic/pneumatic systems. The ATE must maintain awareness of aircraft systems maintenance programs and project changes, implement critical FAA Airworthiness Directives and manufacturer Service Bulletins. The ATE interfaces with all levels of the company and vendor overhaul shop providers. The ATE provides on-site assessments of overhaul shop, hangar and line maintenance activities to anticipate problems and abnormal trends. The ATE must be prepared to provide technical assistance about the use and proper interpretation of data and technical instructions. The ATE reviews reported aircraft system malfunctions to analyze any undesirable trends and implement corrective actions. The ATE reviews the effectiveness of maintenance actions to identify training needs. The ATE applies his/her knowledge of engineering, technology and materials to ensure functionality, appearance, efficiency, and cost. The ATE may examine, analyze and test airframe and engine operating systems. The ATE creates and develops avionics integration systems and maintains working drawings and technical documentation. The ATE may perform problem diagnosis and fault isolation while assisting in the development of project plans. The ATE provides direct support for shop, hangar and line maintenance in troubleshooting and provides corrective action that can include repair development. Finally, the ATE performs important aircraft component and system analysis of reliability trends to develop proactive plans to prevent reliability problems and implement corrective action.

[2] In response to the RFE, the Petitioner also submitted a document entitled "Job Title: Aircraft Technologies Engineer," which included a breakdown of the duties and the approximate percentage of time the Beneficiary will spend performing each duty. However, the percentages of time allocated to each duty are not probative evidence as the document was not prepared on the Petitioner's letterhead or otherwise endorsed by the Petitioner. The record of proceeding does not indicate the source of the percentages of time allocated to each duty attributed to the proffered position by this document.

In addition, the Petitioner states that the proffered position requires "a Bachelor's degree in Engineering, Aircraft Technology, Aircraft Maintenance or similar aircraft-related field or an equivalent combination of education and aircraft industry experience or aircraft industry experience, which may include training education and experience gained through military service."

C. Material Findings

The primary issue is whether the Petitioner has provided sufficient evidence to establish that it will employ the Beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make preliminary findings that are material to the determination of the merits of this appeal.

Upon review of the record, we find that the Petitioner has provided inconsistent information regarding the requirements for the proffered position. For instance, in the letter of support, the Petitioner stated "that a baccalaureate degree in an aviation or engineering field or its equivalent is normally the minimum requirement for employment as an aircraft technologies engineer." However, on appeal, the Petitioner states that the proffered position requires "a Bachelor's degree in Engineering, Aircraft Technology, Aircraft Maintenance or similar aircraft-related field or an equivalent combination of education and aircraft industry experience or aircraft industry experience, which may include training education and experience gained through military service." No explanation for this inconsistency was provided by the Petitioner. It is incumbent upon the Petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the Petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Further, upon review of the Petitioner's descriptions of the duties of the proffered position, we find that the Petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the Beneficiary will perform the functions and tasks. Thus, the record does not include which tasks are major functions of the proffered position and the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the Petitioner has not established the primary and essential functions of the proffered position.

Moreover, we find that the Petitioner described the proposed duties in terms of generalized and generic functions that do not convey sufficient substantive information to establish the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the Petitioner's assertion that the Beneficiary "provides technical leadership and direction to activities in the operation, maintenance, inspection, troubleshooting and repair of aircraft avionics systems, including auto pilot, communications, electrical, fire warning, instruments, navigation systems and related components, and hydraulic/pneumatic systems." However, the statement does

not provide any insight into the Beneficiary's actual duties, nor does it include any information regarding the specific tasks that the Beneficiary will perform.

Further, the Petitioner claimed that the Beneficiary "interfaces with all levels of the company and vendor overhaul shop providers" and "provides on-site assessments of overhaul shop, hangar and line maintenance activities to anticipate problems and abnormal trends." Notably, the Petitioner does not demonstrate how the performance of these duties, as described in the record, would require the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent.

The Petitioner also claimed the Beneficiary's work includes "review[ing] reported aircraft system malfunctions to analyze any undesirable trends and implement corrective actions" and "review[ing] the effectiveness of maintenance actions to identify training needs." The Petitioner's statements do not convey any pertinent details as to the actual work involved in these tasks. The Petitioner does not explain the Beneficiary's specific role and how his work will be conducted and/or applied within the scope of the Petitioner's business operations. Furthermore, the Petitioner does not convey how a baccalaureate level of education (or higher) in a specific specialty, or its equivalent, would be required to perform these tasks. Thus, the overall responsibilities for the proffered position contain generalized functions without providing sufficient information regarding the particular work, and associated educational requirements, into which the duties would manifest themselves in their day-to-day performance within the Petitioner's business operations.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. It is not evident that the proposed duties as described in this record of proceeding, and the position that they comprise, merit recognition of the proffered position as a specialty occupation. To the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the duties and responsibilities of the proffered position.

The Petitioner has not provided sufficient details regarding the nature and scope of the Beneficiary's employment or substantive evidence regarding the actual work that the Beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described do not communicate (1) the actual work that the beneficiary would perform; (2) the complexity, uniqueness and/or specialization of the tasks; and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. For this reason alone, the petition may not be approved.

D. Analysis

We now turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). As explained above, the Petitioner has not established the nature of the proffered position and in what capacity the Beneficiary will actually be employed within the Petitioner's business operations. As the Petitioner has not established the substantive nature of the work to be performed by the Beneficiary, this precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position

Nevertheless, assuming, for the sake of argument, that the Petitioner had adequately and accurately described the duties of the proffered position, we will now discuss the proffered position in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

USCIS recognizes the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] The Petitioner asserted in the Labor Condition Application (LCA) that the proffered position falls under the "Aerospace Engineers" occupational category.[4] We

[3] All of the references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site http://www.bls.gov/OCO/. The excerpts of the *Handbook* regarding the duties and requirements of the referenced occupational categories are hereby incorporated into the record of proceeding.

[4] The Petitioner designated the proffered position as a Level I (entry level) position. The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

> **Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

reviewed the chapter of the *Handbook* entitled "Aerospace Engineers" but did not find that the duties of the proffered position correspond to this occupational classification.[5] The *Handbook* describes the duties of "Aerospace Engineers" in the subsection entitled "What Aerospace Engineers Do" and states the following about the duties of this occupation:

> Aerospace engineers design aircraft, spacecraft, satellites, and missiles. In addition, they test prototypes to make sure that they function according to design.
>
> **Duties**
> Aerospace engineers typically do the following:
>
> - Direct and coordinate the design, manufacture, and testing of aircraft and aerospace products
> - Assess proposals for projects to determine if they are technically and financially feasible
> - Determine if proposed projects will result in safe aircraft and parts
> - Evaluate designs to see that the products meet engineering principles, customer requirements, and environmental challenges
> - Develop acceptance criteria for design methods, quality standards, sustainment after delivery, and completion dates
> - Ensure that projects meet quality standards
> - Inspect malfunctioning or damaged products to identify sources of problems and possible solutions
>
> Aerospace engineers may develop new technologies for use in aviation, defense systems, and spacecraft. They often specialize in areas such as aerodynamic fluid flow; structural design; guidance, navigation, and control; instrumentation and communication; robotics; and propulsion and combustion.
>
> Aerospace engineers can specialize in designing different types of aerospace products, such as commercial and military airplanes and helicopters; remotely piloted aircraft and rotorcraft; spacecraft, including launch vehicles and satellites; and military missiles and rockets.

U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

[5] For additional information regarding the occupational category "Aerospace Engineers," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Aerospace Engineers, available at http://www.bls.gov/ooh/architecture-and-engineering/aerospace-engineers.htm#tab-1 (last visited Oct. 7, 2015).

> Aerospace engineers often become experts in one or more related fields: aerodynamics, thermodynamics, celestial mechanics, flight mechanics, propulsion, acoustics, and guidance and control systems.
>
> Aerospace engineers typically specialize in one of two types of engineering: aeronautical or astronautical.
>
> ***Aeronautical engineers*** work with aircraft. They are involved primarily in designing aircraft and propulsion systems and in studying the aerodynamic performance of aircraft and construction materials. They work with the theory, technology, and practice of flight within the earth's atmosphere.
>
> ***Astronautical engineers*** work with the science and technology of spacecraft and how they perform inside and outside the earth's atmosphere.
>
> Aeronautical and astronautical engineers face different environmental and operational issues in designing aircraft and spacecraft. However, the two fields overlap a great deal because they both depend on the basic principles of physics

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Aerospace Engineers, available at http://www.bls.gov/ooh/architecture-and-engineering/aerospace-engineers.htm#tab-2 (last visited Oct. 7, 2015).

We reviewed the record of proceeding, but are not persuaded by the Petitioner's claim that the proffered position falls under the "Aerospace Engineers" occupational category. In the instant case, the Petitioner submitted a description of the proffered position, but the statements do not include information regarding the day-to-day tasks of the position and do not delineate the actual work that the beneficiary will perform. Nevertheless, upon review of the record of proceeding and the chapter regarding "Aerospace Engineers" in the *Handbook*, we find that the Petitioner has not provided sufficient evidence to demonstrate that its aircraft technologies engineer position has the same or similar duties, tasks, knowledge, work activities, etc. that are generally associated with "Aerospace Engineers." For example, the Petitioner does not claim that the Beneficiary will design aircraft, spacecraft, satellites, and missiles. In addition, the Petitioner does not claim that the Beneficiary will assess proposals for projects to determine if they are technically and financially feasible. Additionally, the Petitioner does not assert that the Beneficiary will evaluate designs to see that the products meet engineering principles, customer requirements, and environmental challenges. Further, the Petitioner does not assert that the Beneficiary will develop acceptance criteria for design methods, quality standards, sustainment after delivery, and completion dates. The Petitioner also does not claim that the Beneficiary will develop new technologies for use in aviation, defense systems, and spacecraft. The duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the Beneficiary may perform a few general tasks in common with this occupational group, but not that the Beneficiary's duties would constitute an aerospace

engineer position, and not that they would require the range of specialized knowledge that characterizes this occupational category.

As the Petitioner has not demonstrated that the proffered position falls under the "Aerospace Engineers" occupational category, we will not further address this occupational category as it is not relevant to this proceeding.

The Director reviewed the job description provided by the Petitioner and found that the proffered position falls under the "Aircraft and Avionics Equipment Mechanics and Technicians" occupational category.[6] The *Handbook* states the following about this occupational category:

> Aircraft and avionics equipment mechanics and technicians repair and perform scheduled maintenance on aircraft. They also perform aircraft inspections as required by the Federal Aviation Administration (FAA).
>
> **Duties**
> Aircraft mechanics typically do the following:
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> - Examine replacement aircraft parts for defects
> - Diagnose mechanical or electrical problems
> - Read maintenance manuals to identify repair procedures
> - Repair wings, brakes, electrical systems, and other aircraft components
> - Replace defective parts using hand tools or power tools
> - Test aircraft parts with gauges and other diagnostic equipment
> - Inspect completed work to ensure that it meets performance standards
> - Keep records of maintenance and repair work
>
> Avionics technicians typically do the following:
>
> - Test electronic instruments, using circuit testers, oscilloscopes, and voltmeters
> - Interpret flight test data to diagnose malfunctions and performance problems
> - Assemble components, such as electrical controls and junction boxes, and install software
> - Install instrument panels, using hand tools, power tools, and soldering irons
> - Repair or replace malfunctioning components
> - Keep records of maintenance and repair work

[6] For additional information regarding the occupational category "Aircraft and Avionics Equipment Mechanics and Technicians," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Aircraft and Avionics Equipment Mechanics and Technicians, available at http://www.bls.gov/ooh/installation-maintenance-and-repair/aircraft-and-avionics-equipment-mechanics-and-technicians.htm#tab-1 (last visited Oct. 7, 2015).

Today's airplanes are highly complex machines that require reliable parts and service to fly safely. To keep an airplane in peak operating condition, aircraft and avionics equipment mechanics and technicians perform scheduled maintenance, make repairs, and complete inspections. They must follow detailed federal regulations set by the FAA that dictate maintenance schedules for a variety of different operations.

Many mechanics are generalists and work on many different types of aircraft, such as jets, piston-driven airplanes, and helicopters. Others specialize in one section of a particular type of aircraft, such as the engine, hydraulics, or electrical system of a particular aircraft. In independent repair shops, mechanics usually inspect and repair many different types of aircraft.

Most mechanics who work on civilian aircraft have either one or both of the FAA's Airframe and Powerplant (A&P) certificates. Mechanics who have these certificates are authorized to work on most parts of the aircraft, excluding flight instruments and major work on propellers. Maintaining a plane's electronic flight instruments is typically the job of specialized avionics technicians.

The following are examples of types of aircraft and avionics equipment mechanics and technicians:

Airframe and Powerplant (A&P) mechanics are certified generalist mechanics who can independently perform many maintenance and alteration tasks on aircraft. A&P mechanics repair and maintain most parts of an aircraft, including the engines, landing gear, brakes, and air conditioning systems. Some specialized activities require additional experience and certification.

Maintenance schedules for aircraft may be based on hours flown, days since the last inspection, trips flown, or a combination of these factors. Maintenance also may need to be done to address specific issues recognized by manufacturers. To complete maintenance, mechanics use precision instruments to measure wear and identify defects. They may use x rays, magnetic, or ultrasonic inspection equipment to discover cracks that cannot be seen on a plane's exterior. They check for corrosion, distortion, and cracks in the aircraft's main body, wings, and tail. They then repair the metal, fabric, wood, or composite materials that make up the airframe and skin.

After completing all repairs, mechanics must test the equipment to ensure that it works properly. Aircraft equipped with digital monitoring systems can provide mechanics with valuable diagnostic information from electronic consoles. Mechanics must also keep records of all maintenance that they do on an aircraft.

The A&P ratings are generally considered the initial and most basic ratings needed to be a professional mechanic. Many additional certifications and specializations can be

> pursued to expand the ability of a mechanic to perform additional duties. Some of these specializations are as follows:
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> ***Avionics technicians*** are specialists who repair and maintain a plane's electronic instruments, such as radio communications, radar systems, and navigation aids. As the use of digital technology increases, more time is spent maintaining computer systems. The ability to repair and maintain many avionics and flight instrument systems is granted through the Airframe rating, but other licenses or certifications may be needed.
>
> ***Designated airworthiness representatives (DARs)*** examine, inspect, and test aircraft for airworthiness. They issue airworthiness certificates, which aircraft must have to fly. There are two types of DARs, manufacturing DARs and maintenance DARs.
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> ***Inspection Authorized (IA) mechanics*** are mechanics who have both Airframe and Powerplant licenses and who may perform inspections on aircraft and return them to service. IA mechanics are able to do a wider variety of maintenance and alterations than any other type of maintenance personnel, such as comprehensive annual inspections or returning aircraft to service after a major repair.
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> ***Repairmen*** certificate holders may or may not have the A&P or other certificates. Repairmen certificates are issued by certified repair stations to aviation maintenance personnel and the certificates allow them to do very specific duties. Repairmen certificates are valid only while the mechanic works at the issuing repair center and are not transferable to other employers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Aircraft and Avionics Equipment Mechanics and Technicians, available at http://www.bls.gov/ooh/installation-maintenance-and-repair/aircraft-and-avionics-equipment-mechanics-and-technicians.htm#tab-2 (last visited Oct. 7, 2015).

The subchapter of the *Handbook* entitled "How to Become an Aircraft and Avionics Equipment Mechanic or Technician" states, in part, the following about this occupation:

> Most aircraft and avionics equipment mechanics and technicians learn their trade at an FAA-approved Aviation Maintenance Technician School. Others enter with a high school education or equivalent and are trained on the job. Some workers enter the occupation after getting training in the military. Aircraft mechanics and avionics technicians are typically certified by the FAA. See the Title 14 of the Code of Federal Regulations (14 CFR) part 65, subpart D and E, for the most current requirements for becoming a certified mechanic.
>
> **Education and Training**

> Aircraft mechanics and service technicians typically enter the occupation after attending a Part 147 FAA-approved Aviation Maintenance Technician School. These programs award a certificate of completion that the FAA recognizes as an alternate to the experience requirements stated in the regulations, and grants holders the ability to take the relevant FAA exams.
>
> Some aircraft mechanics and service technicians enter the occupation with a high school diploma or equivalent and receive on-the-job training to learn their skills and to be able to pass the FAA exams. Some workers enter the occupation after getting training in the military. Aviation maintenance personnel who are not certified by the FAA work under supervision until they have enough experience and knowledge and become certified.
>
> Avionics technicians typically earn an associate's degree before entering the occupation. Aircraft controls, systems, and flight instruments have become increasingly digital and computerized. Maintenance workers who have the proper background in aviation flight instruments or computer repair are needed to maintain these complex systems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Aircraft and Avionics Equipment Mechanics and Technicians, available at http://www.bls.gov/ooh/installation-maintenance-and-repair/aircraft-and-avionics-equipment-mechanics-and-technicians.htm#tab-4 (last visited Oct. 7, 2015).

The typical duties of positions within the "Aircraft and Avionics Equipment Mechanics and Technicians" occupational category as described in the *Handbook* contain some aspects in common with the Beneficiary's duties as described by the Petitioner. However, we find that the occupational category as described in the *Handbook* does not fully encompass the duties of the proffered position. It is further noted that the *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. More specifically, the *Handbook* states that an FAA certificate, high school diploma, or an associate's degree is acceptable for the occupation. Thus, for this occupation, a baccalaureate or higher degree in a specific specialty, or its equivalent, is not normally the minimum requirement for entry.

On appeal, the Petitioner submitted an opinion letter prepared by [redacted] of [redacted] lists the duties of the proffered position as described by the Petitioner in the letter of support, and concludes that the proffered position is a specialty occupation that requires a bachelor's degree in aeronautical technology, or a closely related field.

Upon review of the opinion letter, there is no indication that [redacted] possesses any knowledge of the Petitioner's proffered position and its business operations beyond that which was provided in the Petitioner's letter of support. There is no evidence that [redacted] has visited the Petitioner's

business, observed the Petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. He does not demonstrate or assert in-depth knowledge of the Petitioner's specific business operations or how the duties of the position would actually be performed in the context of the Petitioner's business enterprise.

Furthermore, it does not appear that is aware that the Petitioner designated the proffered position as a Level I (entry) position (the lowest out of four assignable wage-levels) in the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the Beneficiary is only expected to possess a basic understanding of the occupation. It appears that would have found this information relevant for the opinion letter. Without this information, the Petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the Petitioner's position.

We may, in our discretion, use an advisory opinion or statement submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of our discretion, we find that the advisory opinion letter is not probative evidence of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion regarding the opinion letter into our analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The requirement of a baccalaureate or higher degree in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ

and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals." Thus, based upon a complete review of the record of proceeding, we find that the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent

We will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which is satisfied if the Petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In support of its assertion that the proffered position qualifies as a specialty occupation, the Petitioner described the proffered position and its business operations. Upon review, we conclude that the Petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the Petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial in performing certain duties of the position, the Petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record does not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment.

This is further evidenced by the LCA submitted by the Petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry) wage, which is the lowest of four assignable wage levels. As previously mentioned, the wage-level of the proffered position indicates that (relative to other positions falling under this occupational category) the Beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work

closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Without further evidence, it is not credible that the Petitioner's proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.[7] For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."[8]

The Petitioner claims that the beneficiary is well qualified for the position, and references his qualifications. However, the test to establish a position as a specialty occupation is not the education or experience of a proposed beneficiary, but whether the position itself requires at least a bachelor's degree in a specific specialty, or its equivalent. The Petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position, and any other documentation submitted by a petitioner in support of this criterion of the regulations.

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. While a petitioner may assert that a proffered position requires a specific degree, that statement alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could

[7] The issue here is that the Petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty, or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

[8] For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The Petitioner claims that all of its aircraft technologies engineers possess a bachelor's degree. In response to the RFE, the Petitioner submitted the academic credentials and Wage and Tax Statements (Forms W-2) for 2013 for 19 individuals. Upon review, we find that the Forms W-2 indicate that many of the individuals were paid significantly higher than the offered salary to the beneficiary. Thus, it appears that these individuals are employed in more senior or different positions. Nor did the Petitioner explain by what objective criteria it determined these foreign diplomas to be equivalent to a U.S. bachelor's degree in a specific specialty, or its equivalent.

In addition, the Petitioner submitted copies of 18 of the 19 individuals' H-1B approval notices as evidence that USCIS has previously approved H-1B cases submitted by the Petitioner for the proffered position. However, the Petitioner did not submit copies of the petitions and supporting documents. The documentation provided by the Petitioner does not contain key information regarding the referenced positions, including the job titles, day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, or the amount of supervision received to make a legitimate comparison of the referenced positions to the proffered position.

If a petitioner wishes to have unpublished service center or AAO decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

As the record of proceeding does not contain copies of the petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm. 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to request and/or obtain a copy of the petitions cited by the petitioner.

Nevertheless, if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the Director. We are not required to approve applications or 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. 597. It would be absurd to suggest that USCIS or any 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, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a Director had approved the nonimmigrant petition, we 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).

The Petitioner also submitted a copy of its newspaper advertisement for the proffered position, which was posted on June 16, 2013. The advertisement states that the position "[r]equires degree or equivalent combination of education and experience equal to a degree in engineering (aeronautical, aircraft technology, mechanical, electrical or aircraft maintenance)." Notably, the announcement does not indicate the degree level (e.g., associate's degree, vocational degree, baccalaureate, master's degree) for the position.

Moreover, the Petitioner stated on the Form I-129 petition that it has 758 employees and that it was established in (approximately 12 years prior to the filing of the H-1B petition). The Petitioner did not provide any further information or evidence regarding its recruiting history for the position advertised. Consequently, it cannot be determined how representative the petitioner's claim regarding *19 individuals and one announcement over a 12 year period* is regarding the Petitioner's normal recruiting and hiring practices. The Petitioner has not persuasively established that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

The Petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the Petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 a specific specialty, or its equivalent

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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 a specific specialty, or its equivalent.

Upon review of the record of the proceeding, we find that the Petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instance case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions in the occupational category that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

We further incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (of the lowest of four assignable wage-levels) relative to others within the occupational category. Without more, the position is one not likely distinguishable by relatively specialized and complex duties. That is, without further evidence, the Petitioner has not demonstrated that its proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage.[9]

[9] As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

The Petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the Petitioner has not established that the duties of the position are 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, or its equivalent. We therefore, conclude that the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, the Petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal is dismissed and the petition denied.

II. CONCLUSION AND ORDER

In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.[10]

ORDER: The appeal is dismissed.

Cite as *Matter of VTS-A-A-, Inc.*, ID# 14088 (AAO Oct. 14, 2015)

[10] As the identified grounds for denial are dispositive of the Petitioner's continued eligibility, we need not address any additional issues in the record of proceeding.