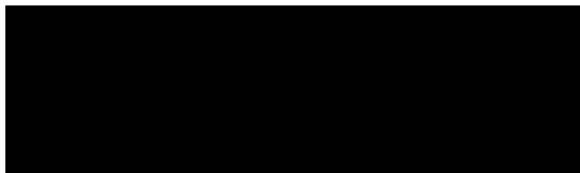


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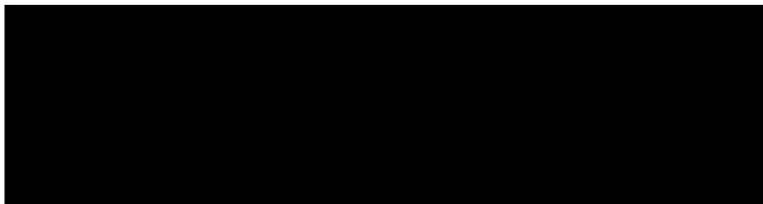
Date: JUN 22 2006

IN RE:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a writer/reporter. He seeks to employ the beneficiary as a research assistant and to classify her 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains (1) Form I-129 and supporting documentation; (2) the director's decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying the Form I-129 the petitioner describes himself as a journalist who has worked in the daily newspaper business for 30 years – the last 24 at the Baltimore Sun – in a variety of reporting and editing positions. The petitioner states that he is currently engaged in research for a book about the Middle East, drawing on more than a decade of reporting on the region, and needs to hire a research assistant to help him with the substantive research and writing tasks. The petitioner provides the following description of the job:

Not only will the research assistant be required to conduct professional level research, he or she will also be required to conduct telephone and in-person initial interviews with academic, political, and think tank experts, gather information from various sources, read and clip major newspapers and academic journals, interact with various governmental and non-governmental offices to gather and assimilate research information and then assemble the information into a format that I can utilize in my writing.

According to the petitioner, the minimum educational requirement for the position is a bachelor's degree in journalism, communications, or a related field. The beneficiary qualifies for the job, the petitioner declares, by virtue of her bachelor of arts degree, with a major in mass communication–broadcast, from Centro Escolar University in Manila, the Philippines, awarded on March 31, 2003. According to the report of an academic credentials evaluation service in Miami Beach, Florida, the beneficiary's education is equivalent to a bachelor of science in communication, with a major in broadcast journalism, from an accredited university in the United States.

In her decision the director determined that the record failed to show that the duties of the proffered position require a baccalaureate or higher degree to perform. The job duties described by the petitioner are general in nature, the director indicated, and do not clearly indicate what the beneficiary will do. The director referred to information in the Department of Labor (DOL)'s *Dictionary of Occupational Titles (DOT)* as indicating that research assistants have a Specific Vocational Preparation (SVP) of level 7, which means that fewer than four years of study is required for entry into the occupation. The documentation of record does not establish that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the director stated, or that specialized knowledge usually associated with a baccalaureate degree is required to perform the job duties. The director concluded that the proffered position does not qualify as a specialty occupation under the statute or any of the regulatory criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the research assistant position qualifies as a specialty occupation under the first, second, and fourth criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel augments the petitioner's original description of the proffered position, as follows:

The research assistant will produce a continuous flow of memoranda on various topics on the Middle East in order to facilitate the petitioner's work. A vast amount of information must be culled from a large variety of resources. It is expected that the research assistant will work independently to extract and assemble the pertinent information into a usable format. She will contact various academic, political, and think tank experts, as well as Congressional experts, about the current state of the Administration's policy. She will do library and computer research and write memoranda on the information gathered. Because the subject of the book is a very current, ever changing topic, it is particularly

important to have an assistant who can continuously monitor the news and synthesize new events into already completed parts of the book. Additionally, once the information is gathered and organized, the research assistant will provide other professional services typical to the field, such as proofreading and editing, as well as be responsible for fact and source checking.

Performance of the foregoing duties, counsel contends, requires a baccalaureate degree in journalism or communications. According to counsel, the duties are not general or theoretical, but specific to the needs of the petitioner in writing a lengthy book about current affairs in the Middle East. Counsel submits a letter from an independent writer of numerous books and articles, Paul Dickson, who declares that research assistants with a backgrounds in journalism or a related field are crucial to the completion of book projects like the petitioner's. Counsel asserts that the director misinterpreted the educational component of the *DOT*'s Special Vocational Preparation (SVP) rating for a research assistant, which actually indicates that a four-year degree is required for the proffered position. Counsel also cites two other H-1B petitions for research assistants with similar duties that were approved by the service center.

In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are crucial, not the title of the position. The petitioner must show that the performance demands of the position require a specialty degree. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000).

In accord with the director's decision, the AAO determines that the duties of the proffered position, as described by the petitioner and counsel, do not demonstrate that a baccalaureate degree in journalism, communications, or a related specialty is required for the position. Neither the petitioner nor counsel identifies precisely what the research assistant will be doing. They state that the beneficiary will be "conducting research" and producing "memoranda on various topics," but have not identified any specific subject matters or countries of focus. They indicate that the beneficiary will conduct interviews with academic, political and think tank experts, but have not identified any individuals or organizations they intend to target, or the subject areas they will discuss. Counsel states that the research project involves the "current state of the Administration's policy," but has not identified what particular U.S. policy or policies in the broad Middle East realm will be explored and with what particular country or countries. The AAO agrees with the director that the proffered position's duties are described in general terms, without substantive details about the tasks that the beneficiary would perform and the subject matters to be researched. The petitioner has not demonstrated that a body of highly specialized knowledge and a baccalaureate degree in journalism, communications, or a related specialty is required to perform the job. The AAO determines that the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A), because the record fails to establish that a specialty degree in journalism, communications, or a related specialty is the normal minimum requirement for entry into the position.

With respect to the *Dictionary of Occupational Titles (DOT)*, which rates research assistants at an SVP of level 7 requiring "over two years up to an including four years of specific vocational preparation," the AAO disagrees with counsel's interpretation of that language as meaning that a four-year degree is

required for research assistants. The *DOT's* language clearly indicates that a four-year degree is not the normal minimum requirement for the occupation. Furthermore, the *DOT* is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate the total number of years of vocational preparation required for a particular position. It does not specify 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 particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a research assistant position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel has submitted on appeal a letter from ██████████ who states that he is an independent author of non-fiction books and magazine articles and routinely employs research assistants to help in his writing. As explained by ██████████, his assistants have included summer interns, research librarians, indexers and co-authors. In his latest two projects ██████████ indicates that he has worked with a military historian, a reference librarian, a Ph.D. scientist, and other helpers. Though some of ██████████ assistants appear to have specialty degrees, others do not. ██████████ has not described any particular research performed by these assistants, nor provided any explanation as to why the research required a baccalaureate or higher degree in a specific specialty. Moreover, no corroborating evidence has been submitted that identifies any of these assistants, describes the work they performed for ██████████ and documents their educational degrees. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *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)). Though ██████████ declares that research assistants with backgrounds in journalism or a related field are crucial to the completion of book projects like the petitioner's, the record does not establish his expertise to evaluate the educational requirements of a research assistant working on the petitioner's book project. ██████████ did not describe the subject matter of the petitioner's book or explain why a bachelor's degree is needed to perform the research. He did not relate the job requirements of the proffered position to the degree requirement, if any. Accordingly, the factual foundation is inadequate to support the ██████████ conclusion that a degree in journalism or a related field is required to perform the job.

CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion does not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. See *Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the opinion letter discussed above is not persuasive evidence that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that a degree in a specific specialty is required to perform the job, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it normally

requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the evidence of record fails does not show that the duties of the proffered position are so specialized and complex that baccalaureate or higher level knowledge in a specific specialty is required to perform them, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As previously discussed, the record contains no specifics about the subject matter of the petitioner's book project, who will be interviewed, and where the research material will be gleaned. On the present record it is impossible for the AAO to determine the nature and depth of the research that must be conducted, and whether it requires baccalaureate level knowledge in journalism, communications, or a related specialty. The AAO concludes, therefore, that the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Two previous decisions by the Vermont Service Center cited on appeal, which counsel indicates were approvals of petitions for research assistant positions, provide no guidance for the adjudication of the instant petition. No evidence has been submitted to show that the job duties and petitioning entities are similar to those in the instant petition. Moreover, the AAO is not bound by a decision issued by a service center or a district director. *See 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). As specified in the regulations, 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 petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The record in the instant proceeding does not establish that the petitioner's research assistant petition qualifies as a specialty occupation under the Act.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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