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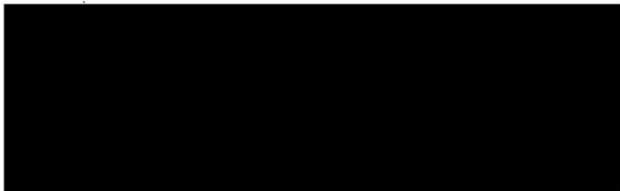


FILE: WAC 06 215 52367 Office: CALIFORNIA SERVICE CENTER Date: JAN 04 2008

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:



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.

A handwritten signature in black ink that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a non-profit newspaper publisher that seeks to employ the beneficiary as a market research analyst. 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

Citizenship and Immigration Services (CIS) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner seeks the beneficiary’s services as a market research analyst. Evidence of the beneficiary’s duties includes: the petitioner’s June 20, 2006 letter in support of the petition and counsel’s November 16, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

1. Analyzing operational procedures to devise the most efficient methods of accomplishing work;
2. Planning study of work problems and procedures, such as organizational change, and information and inventory control;
3. Gathering and organizing information on problems or procedures including present operating procedures;
4. Planning and reviewing integrated production methods, inventory control, and cost analysis;
5. Analyzing data gathered, developing information and considering available solutions or alternate methods of proceeding;
6. Preparing reports and findings;

7. Recommending implementation of new systems, procedures or organizational changes;
8. Conferring with personnel concerned to assure smooth functioning of newly implemented systems or procedures;
9. Conducting operational effectiveness reviews to ensure functional systems are applied and function as designed; and
10. Providing general support to daily operations of the administration.

The AAO notes that, as reflected in the above listing of duties, the evidence of record lacks specific information about the substantive matters of the petitioner that would be the subject of the petitioner's work, and about the theoretical and practical applications of highly specialized knowledge that performance of the work would require. The record's exclusively generic and generalized information about the proffered position provides an insufficient factual basis for satisfaction of any of the specialty occupation criteria.

The director found that the proposed market research analyst duties do not require a bachelor's degree. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a market research analyst for the petitioner, a publisher and distributor of the Korean Churches Yellow Pages (KCYP) and the weekly Christian newspaper "Christian Today." Counsel also states that the petitioner's base, which extends throughout the United States and to 124 nations, is sufficiently extensive to require the services of a market research analyst. Counsel cites the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* in support of the petition stating that the advertising industry is included among the industries that employ the largest number of market research analysts.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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)).

Although the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations, a position's qualification as a specialty occupation under the related statute and regulations is not accomplished by a petitioner's composing general duties that align with general duties that the DOL's *Handbook* or other DOL resources ascribe to a particular occupational category, for it is the actual performance requirements that determine the type and level of educational credentials necessary for a particular position. Moreover, while a review of the Market and Survey Researchers category in the 2006-07 *Handbook* finds that market research analysts are employed throughout the economy, the *Handbook* does not indicate that a bachelor's degree in a specific specialty is required for a market research analyst position. While the *Handbook* indicates that a degree is generally required, it indicates that a wide variety of courses will prepare a person to perform the duties of a market research analyst. The petitioner did not provide a description of duties in a market research analyst-related field that corresponds to the *Handbook* and that would require a master's degree. It is also noted that in the petitioner's June 20, 2006 letter, the petitioner's CEO described the minimum requirements for the proffered position as "Bachelor's Degree or Higher - Experience in business administration and marketing is also preferred." The petitioner's CEO did not stipulate a bachelor's degree in a specific specialty, thus confirming the position of the DOL in its *Handbook*, namely that there is no requirement of a baccalaureate degree in a specific specialty for a market research analyst position. Of further note, the credentials evaluator concludes that the beneficiary holds the U.S. equivalent of a bachelor's degree in a foreign language and literature (English), plus graduate-level credit towards a master's degree in international management, and has 17 years of employment experience in business and business education. Again, the beneficiary's educational background confirms the position of the DOL in its *Handbook*, namely that there is no requirement of a baccalaureate degree in a specific specialty for a market research analyst position. The petitioner also has not established that the beneficiary's duties related to the Korean language are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with the English and Korean languages or a less extensive education, is necessary for the successful completion of its duties. The *Handbook* does not indicate that a baccalaureate degree in a specialty is required for a translator job. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The record does not include any evidence regarding parallel positions in the petitioner's industry. Nor does the record include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The AAO here incorporates its discussion regarding the generic and generalized description of the actual duties of the proffered position. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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